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ABSTRACT

This Congressional hearing discusses legislation that would require health warnings to be included in advertisements of alcoholic beverages. Opening statements are included from Senators Hollings, Burns, Danforth, Thurmond, and Simon, and from Representative Kennedy. Testimony is included from two panels of witnesses, whose members include: (1) Dean Smith, University of North Carolina; (2) Joseph Wright, Children's National Medical Center; (3) Michael Dorris, parent of a child born with fetal alcohol syndrome; (4) Joyce Brune, mother whose daughter died from alcohol poisoning; (5) Lawrence Wallack, Director of Public Health, School of Public Health, University of California at Berkeley; (6) Steven Shiffrin, law professor, Cornell University Law School; (7) Edward Fritts, president and chief executive officer, National Association of Broadcasters; (8) Jeffrey Becker, vice-president, Alcohol Issues, Beer Institute; (9) Fred Meister, president and chief executive officer, Distilled Spirits Council of the United States; (10) Robert Koch, vice-president, Federal Government Relations, Wine Institute; (11) Burt Neuborne, professor, New York University School of Law; and (12) Martin Block, Integrated Marketing Communications. Prepared statements and relevant materials are appended. (NB)

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ED 361 605

S. HRG. 103-141

S. 674, THE SENSIBLE ADVERTISING AND FAMILY EDUCATION ACT

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

MAY 13, 1993

Printed for the use of the Committee on Commerce, Science, and Transportation

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S. 674, THE SENSIBLE ADVERTISING AND FAMILY EDUCATION ACT

THURSDAY, MAY 13, 1993

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SR–253 of the Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Antoinette "Toni" D. Bush, senior counsel, and John D. Windhausen, Jr., staff counsel; and Regina M. Keeney, and Mary P. McManus, minority staff counsels.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. The committee will come to order.

The other witnesses, Senator Simon, Congressmen Kennedy and Conyers will be along, but we have got a full hearing here this morning and two rather large panels. We will have to use the clock for timing.

The legislation in this particular field, I have put my statement in the record.

[The prepared statement of the chairman follows:]

PREPARED STATEMENT OF SENATOR HOLLINGS

I welcome everyone to this morning's Commerce Committee hearing. Today, we will hear testimony on legislation, introduced by my senior colleague, and good friend, Senator Thurmond from the State of South Carolina, that would require health warnings to be included in advertisements of alcoholic beverages.

The legislation we are examining today seeks to ensure that the general public, and specifically those who are consumers of alcoholic beverages, are aware of the potential dangers associated with the consumption of alcohol, so as to prevent abuse and health risks. Testimony received at a hearing we held last year on a similar bill indicates that over 22 million Americans are addicted to alcohol, including 4.5 million who are under the legal drinking age. Alcohol-related injuries, deaths, and health problems reportedly cost our Nation approximately $85 billion a year.

For many years, I have supported legislation to combat alcohol abuse and alcohol-related problems. In the last Congress, I cosponsored legislation introduced by Senator Bryan to encourage States through Federal incentive grants, to enact more stringent drunk driving laws, including mandatory revocation of licenses and jail sentences. The legislation was passed as part of the Federal highway bill.

I also was successful in getting passed a bill to require drug and alcohol testing of transportation workers operating airplanes, trains, trucks, buses, and public transit systems. It is inexcusable, in my opinion, to let people fly planes and operate sophisticated rail systems without being assured that they are capable of doing so.

In the 100th Congress, I supported legislation introduced by Senator Thurmond to require health warnings to be placed on alcoholic beverage containers. That legis-

lation was reported by this committee and passed by the Congress. I am proud to have worked with Strom on the passage of that bill.

Senator Thurmond has been a tireless warrior in the battle against alcohol abuse. His dedication and commitment to this great cause are without question. I certainly admire his courage to come before the committee today. As I am sure everyone is aware, Senator Thurmond suffered the loss of his 22-year-old daughter, Nancy Moore, several weeks ago, reportedly at the hands of a drunk driver. Nancy Moore was one of the finest human beings you would ever want to meet. I knew her from the time she was a little girl. She was always energetic, had a beautiful smile, and always was thoughtful of others. I, and all the citizens of South Carolina, mourn her loss along with Senator Thurmond and the rest of his family.

The CHAIRMAN. This issue has always been the most difficult. Senator Danforth and I had drug and alcohol testing for employees in public transportation. We passed it through the Senate 11 times and never could get a vote in the House until I put it in a markup on a transportation appropriations bill, where legislation is not supposed to appear. And I put it on there as a member of the appropriations committee and we got an overwhelming vote in the House.

My senior Senator's tragic loss is statement enough. We all feel very, very keenly in this particular regard.

Senator Thurmond, let me yield to Senator Conrad Burns.

OPENING STATEMENT OF SENATOR BURNS

Senator BURNS. Thank you, Mr. Chairman. Good morning to you.

Good morning, Senator.

Good morning, Congressman.

Thank you for coming today.

Mr. Chairman, like you and Senator Thurmond and all good parents and citizens, we are deeply concerned about the consumption of alcohol by minors and about alcohol abuse in general. Particularly disturbing are the statistics showing that almost one-half of this Nation's traffic fatalities are alcohol related.

I am also concerned, however, that the bill before this committee this morning does not alleviate most of those concerns. The fact is that the public is already aware that excessive consumption can be harmful. And there is no scientific research that I am aware of which demonstrates advertising is a major contributor to alcohol abuse. Moreover, no empirical evidence demonstrates that warnings would have an impact on Americans' drinking patterns.

Because mandated warnings make specific media too expensive for brand messages, there will be no incentive for producers to continue to sponsor responsible drinking campaigns. We have to keep going back to that issue.

Because of the length of the warnings, they would constitute a de facto ban on certain forms of alcohol advertising—namely, television and radio broadcast in particular. The resulting limit on free commercial speech of a legal product violates the Constitution. Moreover, the practical result will be the movement of sports programming from free over-the-air broadcast to cable or into a pay-per-view media.

Let me stress in closing, Mr. Chairman, that I do not take this emotionally charged issue lightly. I believe we should develop new innovative legislation proposals which deal directly with the problems of alcohol abuse and drunk driving, while avoiding the many

problems associated with mandated warnings in alcohol advertising.

I especially want to thank my colleague and good friend, Senator Thurmond, for the way he has taken on this issue and the direction in which he is taking it. And we also understand his recent loss. I, too, can relate to that and how parents all over this country must feel when they have lost a child.

I think there is a way to address this problem. This may not be the correct way, but it is a step in the right direction. And I think there is a correct way, and we can find a way to attain the goals that Senator Thurmond and Congressman Kennedy and all of us want to accomplish, and we want to get this very, very bad problem under control.

I thank the chairman.

The CHAIRMAN. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

I have no statement, except to welcome our dear friend, Senator Thurmond, who has recently, of course, experienced a tragic loss. And he well knows that our hearts go out to him in his time of tragedy and sorry. And, as always, we look forward to hearing from him on this issue as we do on every issue.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Danforth.

OPENING STATEMENT OF SENATOR DANFORTH

Senator DANFORTH. Mr. Chairman, thank you very much.

This is a very serious subject and, over the years, this committee has a commendable record in dealing with the terrible problem of drunk driving in this country.

Going back at least to the 97th Congress, we have passed bills that have, I think, been major steps in the right direction. We have provided for prompt suspension of driver's licenses, administrative suspension of driver's licenses on the spot for people who are stopped and are drunk. We have encouraged States to provide a minimum drinking age, a uniform drinking age throughout the country of 21 years.

We have passed legislation which has led to the creation of a .10-percent blood alcohol content uniformly throughout the country. We have passed legislation to provide for mandatory testing of professional transportation people for drug and alcohol content.

These and other things that have been passed by this committee constitute a commendable record for the Senate Commerce Committee. In this Congress, S. 738, the High Risk Drivers Act of 1993, includes a number of additional features—reducing the blood alcohol content maximum for drivers under the age of 21 to .02; a minimum $500 penalty for selling alcohol to minors; a minimum 6-month license suspension for minors with alcohol conviction; an open container prohibition; and underage drunk driving education and enforcement.

All of these are parts of S. 738, and it is my hope that we will be able to deal with the provisions of S. 738 in a timely fashion in this committee.

I would like to say very much the same thing that was said by Senator Burns. I have a tremendous affection for Senator Thur-

mond that goes back since before I came to the Senate. I love the man. No one can share what he has gone through, but I really have the greatest, greatest feeling for him.

I am not sure if the particular legislation before us is exactly on the subject with which we should be dealing; namely, the specific problem of drunk driving. And it would obviously cause considerable disruption for various sectors of our country if it were enacted. But I believe that the problem of drunk driving is a great, great tragedy, and I think that our committee should continue to address real solutions to the problem.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Lott.

Senator LOTT. Thank you, Mr. Chairman.

Just very briefly, I would like to welcome our panel here and the one that will follow them. We all share the same feelings about our friend and colleague in the Senate, Senator Thurmond. And that certainly has an impact on us when we consider this legislation.

I do have very serious reservations about the legislation as it is now drafted, but I look forward to working with the committee membership and the distinguished panel to find the proper solution.

Thank you, Mr. Chairman.

The CHAIRMAN. Very good. Thank you.

Senator Thurmond, we would be delighted to hear from you now, sir.

STATEMENT OF HON. STROM THURMOND, U.S. SENATOR FROM SOUTH CAROLINA

Senator THURMOND. Thank you, Mr. Chairman and members of the Commerce Committee.

I want to recognize the good work that was done on this matter by Congressman Joe Kennedy. Also Congressman John Conyers is very interested in this and a coauthor. Senator Paul Simon is a cosponsor. I want to recognize the work of Mr. George Hacker, director of the Alcohol Policy Project for the Center for Science in the Public Interest. I want to thank all of them for their work on this issue.

I want to say this bill is not in response to the death of my daughter. I have been working on this for a long time. It took 20 years to pass the other bill, to put labels on containers. I hope it will not take 20 years to pass this bill. I realize there are special interests involved here. The alcohol interests and then the broadcasters have talked to me, that it would hurt them. They say it will stop all advertising.

I am not convinced of that. I want to mention a few points to you. Alcohol is the most widely used and widely abused drug among young people today. We speak about drugs—cocaine and all those things—they cannot touch alcohol. They are bad and they do a lot of harm, but not nearly as much as alcohol.

More than 100,000 Americans die each year from preventable alcohol-related causes. Fetal alcohol syndrome is one of the top three known causes of birth defects. And it is the only known preventable cause among the top three. This is one that can be pre-

vented—40,000 infants are born each year with fetal alcohol syndrome or fetal alcohol effects.

The alcohol beverage industry spends nearly $2 billion a year on advertising and promotions. Alcohol abuse costs us over $85 billion in lost productivity, health care, and incarceration-related expense—$85 billion. That is what it costs this Nation.

Close to 50 percent, just about one-half, of all fatal highway crashes are alcohol related. Over 1 million are injured, and almost 2 million potential years of life are lost each year due to alcohol-related traffic crashes.

Now, this bill is the Sensible Advertising and Family Education Act of 1993. Now, I want to give you a little of the background. Its a companion bill to that of Representatives Joe Kennedy and John Conyers in the House. Senator Simon is an original cosponsor, Senators Simpson and Glenn are also cosponsors. It builds upon the foundation of the 1988 alcohol warning label legislation, which, as I say, took 20 years to pass. It builds upon current efforts of the Surgeon General to combat alcohol use by young people.

The substance of the bill requires the use of warnings in alcoholic beverage advertising. It applies to advertising in magazines, newspapers, groceries, promotional displays, radio and television. The Federal Trade Commission would have jurisdiction in this matter.

Now, these warnings do not create any legal restrictions or penalties on the consumers or producers or failure to heed the warnings. This is merely, and I repeat, merely a health and education legislation—not an antialcohol legislation. We just put people on notice of the dangers of alcohol. And how are you going to do it better than in the advertisements they make?

Some of these advertisers have the most beautiful pictures of young people, attractive women and others trying to appeal to the youth to use alcohol, and that that is the thing to do. Well, why not put there also a danger of alcohol? That is the way to stop it.

Do you want to stop it?

There is a way to do it. And this committee can do it.

The only opposition comes from the alcoholic beverage industry, whose concerns are focused on cost to them, which would actually be de minimis. I have also learned in the last few days about broadcasters.

Requiring health and safety warning messages on alcohol advertisements makes sense. I would say to you, if this bill is good for the public, and I am convinced it is good for the public, then why not pass it?

It will affect the alcohol industry some. It is bound to. We want to see less alcohol use. That is the purpose in it. It puts no restrictions, but it puts people on notice what can result if you use it.

Now, members of the committee, I would hope you would report this bill out. I realize the industry have gotten around among you members. I know about the contacts that have been made with some of you to try to find some reason to change this bill or revise it or modify it or do something else. That is your business. If you are going to change it, make it stronger. Make it stronger. Let us protect the young people. Let us protect the public.

That is my purpose.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Thurmond.

I have been trying, as you know, for 30 years to get you with the Kennedys. [Laughter.]

There has got to be a real need for you both to be here today.

Congressman Kennedy, we are glad to recognize you, sir.

STATEMENT OF HON. JOSEPH KENNEDY, U.S. REPRESENTATIVE FROM MASSACHUSETTS

Mr. KENNEDY. The trouble was, Mr. Chairman, it was not this Kennedy you were trying to get him together with. [Laughter.]

First of all, let me thank Chairman Hollings and all of the Senate panel gathered here this morning. We very much appreciate your interest in this bill. And I, just on a very personal note, want to thank Senator Thurmond for his eloquent statement this morning. Obviously the tragedy that he and his family have undergone is something that my family can certainly relate to.

As the Senator is well aware, I lost my younger brother to drug abuse, and I understand very clearly the tragedy and the hurt and pain of losing a loved one to drug and alcohol abuse in this country. And it just seems that it is too bad that it takes tragedies like this in order to really bring to light here in the Congress of the United States the tragedies that too many families around this country have to undergo each and every year.

And I just, after talking shortly after Nancy's death to Senator Thurmond, know that he felt very strongly that it was important to understand that this legislation was not filed in response to Nancy's death, but rather it renewed, I think, all of our commitments to trying to see this legislation dealt with in a serious way.

And Senator Hollings, I think you spoke very clearly and honestly about how difficult it is to get this type of legislation passed. And I have seen firsthand in the House the problems that we face. And it is not just the alcohol industry itself. It is, as Senator Thurmond pointed out, also many members of the media that oppose this legislation.

I have been contacted as recently as yesterday by other Members of Congress that have been visited by lobbyists that tell us that this will eliminate all sports on television, that all alcohol advertising will go off the air. And I hope this morning that we can perhaps burst some of those myths by providing some advertisement tags that would be much more realistic in terms of what this legislation would call for.

You know, nobody expects that this legislation is going to eliminate drinking in America. I have been known to have a few pops and I have no desire to eliminate any kind of—or create any kind of prohibition on drinking, and I would oppose any such legislation.

But I think that what we have here is a situation where while literally tens of thousands of Americans are dying every year—this is the No. 1 killer, No. 1 killer in America of people under the age of 34. It kills three times as many people as all other drugs combined. We sit and spend $12 billion, make constant speeches on the floor of the House and Senate on the fact that we need to eliminate drug abuse in America.

But there is a difference between an older generation of Americans and a younger generation. My generation grew up with drugs and we understand that alcohol is a drug. It is no different than any of the other major drugs that we spend $12 billion in this country trying to eliminate. The difference is that an older generation made this drug legal. And because this is a legal drug, we not only do not spend hardly any money in the Government to control its use, maybe $300 million for fetal alcohol syndrome, but we allow an industry to go out and promote, to the tune of billions of dollars every year, alcohol use.

If you want to get the prettiest girl, you want to be the first down the mountain, you want to win the bicycle race, they tell you to go out and have a beer. Well, too many kids in America have gone out and had that beer and had a lot more to follow up on it—4.5 million American children are addicted to alcohol, 20 million American adults addicted to alcohol.

We are not trying to suggest in any way, shape, or form, that this type of legislation, Senator Burns, is going to eradicate problem drinking. But if you go back to the legislation that my Dad worked on when he was in the Senate of the United States trying to deal with smoking legislation and putting warning ads on smoking advertising.

When I was a kid the TV advertisements on smoking would indicate that if you wanted to get the pretty girl, if you wanted to be a great athlete, what you do is smoke a cigarette. And the entire attitude of America has changed with regard to smoking. We now have a much more realistic view of what happens when you smoke a cigarette. It does not mean that we have made smoking illegal. People still have the right to smoke and people still do smoke. But ordinary citizens have a sense of the downside risk of smoking.

And all we are saying is look, it is not just to deal with drunk driving. There are many thousands of Americans that die of alcohol abuse every year in this country that have nothing to do with driving a car. What we are talking about is giving people a sense—giving that pregnant mother some little warning every time she sees the ad on television that it could be a problem. We are talking about reminding somebody who uses heavy machinery who also might be using prescription drugs that there is a downside risk to having a beer or drinking a glass of wine or having hard liquor as well.

It is reasonable. This is not going to eliminate advertising on television. This is not going to eliminate sports on TV. It is not going to hurt the advertisers. The beer, wine, alcohol industry is going to continue to advertise. They will continue to sell their products. They will just have some slight warning in all those billions of dollars worth of ads promoting alcohol use that there is a downside risk. I think it is a small step, but an important step that over a period of time can do an enormous amount of good in changing the atmospherics around drinking, and that ultimately is the point of this legislation.

Mr. Chairman, if it is OK with you I would like to ask if we could present just two or three ads, I think it is about 2 minutes' worth of advertisements that demonstrate the kind of tag line that we are talking about. So, that when I hear yesterday, for instance, that

one-half the commercial's time on the air would have to be designated toward these warnings, we would like to dispel some of the myths that are currently being promoted.

The CHAIRMAN. Could we hear from Senator Simon first?

Mr. KENNEDY. Oh, of course, however you want to handle it.

The CHAIRMAN. Senator Simon.

STATEMENT OF HON. PAUL SIMON, U.S. SENATOR FROM ILLINOIS

Senator SIMON. Thank you, Mr. Chairman. I simply want to echo what my colleagues have said. And, frankly, as we all know, sometimes the atmosphere changes because of things that happen around here. And the personal tragedy that Senator Thurmond has had to go through has, I think, changed the atmosphere. And I think it would be a great tribute both to Senator Thurmond and to Nancy if this could be passed. I am not suggesting it be passed for that reason, but maybe that tragedy can help us overcome an obstacle.

I think the basic question is, Is the public entitled to some kind of a warning? And I cannot find any reason to believe that the public is not entitled to some kind of a warning. And to my friend Senator Danforth I would simply say it is not simply about driving.

Let me just read the warnings that are suggested. And this is not written in concrete; maybe some of these should be changed. But here: "If you're pregnant, don't drink alcohol. Alcohol may cause mental retardation and other birth defects." That is one warning. A second warning, "if you are under the age of 21 it is illegal to buy alcoholic beverages." A third warning, "alcohol is a drug and may be addictive." A fourth warning, "drive sober. If you don't you could lose your driver's license." That is the only one that refers to driving.

Here are a few others: "Don't mix alcohol with over-the-counter prescription or illicit drugs." "If you drink too much alcohol too fast, you can die of alcohol poisoning." And then finally, "drinking increases your risk of high blood pressure, liver disease, and cancer."

Now, having heard the comments of my colleagues here, I recognize we may face an uphill fight getting this bill out of the committee. This is not written in stone, but it does seem to me we have an obligation to protect the public. Now, this is not a bunch of teetotalers here. My wife and I enjoy a glass of wine with a meal—80 percent of the people who use alcohol use it responsibly. But there are people who need to know that there are potential problems, and all we are asking is that they be notified.

I heard one suggestion yesterday that rather than these warnings, for every six commercials on advertising beer or wine, there would have to be one commercial that takes an equal amount of time telling about the dangers of alcohol.

You know, I do not know what the answer is, but I think it would be unfortunate for the American public if we did not focus more on educating people on the potential dangers of alcohol. And that is where our responsibility rests. We have a responsibility to get the message out.

For example, why should not all pregnant women in this country know that there is a problem drinking alcohol? You know about it,

I know about it, but polls shows there are a great many women who do not know that danger. They ought to know about it. They should not just see only that commercial that makes drinking very attractive.

We have an obligation to protect the public. We are not suggesting an end to all alcohol advertising. I know there are those who favor that. I do not favor that. But I do believe we have a responsibility to warn the public.

Thank you, Mr. Chairman.

The CHAIRMAN. Let the record show that Senator Danforth has already emphasized the record of this committee with respect to alcohol and drug-related legislation. The 1988 bill was voted on and reported out. We had hearings on the 1992 bill, and this particular bill was introduced 2 weeks before the tragedy and I notified the staff and everyone else before that that my senior Senator was going to get a hearing and my senior Senator was going to get a vote. So, do not worry about this committee.

Senator SIMON. Oh, I am not worried, Mr. Chairman—if I may interrupt. I am not worried that you are going to get a vote; I am worried about what the vote is going to be in the committee. [Laughter.]

The CHAIRMAN. Well, you can work on that. You can work on that.

Before we ask the questions here, Congressman Kennedy, we would be delighted to see the particular advertisements that you wanted to refer to.

Mr. KENNEDY. Thank you very much.

[Several advertisements were shown.]

Mr. KENNEDY. Mr. Chairman, I am thirsty. [Laughter.]

Well, I think, Mr. Chairman, basically what we wanted to try and do was demonstrate that these ads can be put on without any tremendous loss to the industry. That while the best-produced and best-acted ads on television—and I think the industry ought to be complimented for their innovation in this regard.

But to think that the industry, by virtue of a "no when to say when" campaign or "think when you drink," which always seemed to me to be a bit of an oxymoron, would—and leaving it up to the industry in and of itself, given the billions of dollars they are spending trying to promote alcohol consumption, is a little like putting a fox in the chicken coop.

But in any event, we hope that this would just demonstrate that the ads can be put together in such a way that would not be overly detrimental to the industry, but would, in fact, provide the necessary, I think, hesitation to those that the ads are directed at.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Very good. We have two issues relative to this particular measure. One is first amendment rights and the other with respect to the effect itself.

Senator Thurmond—or any of the three of you. Senator Thurmond, when we passed your bill 5 years ago, we asked the Bureau of Alcohol, Tobacco, and Firearms over in Treasury to make a report on the effect of the measure, the present warnings that now appear with respect to a bottle of beer and other alcoholic beverages.

Common sense would indicate a result, but we constantly ask at the committee level what scientific or studied proof is there that this particular approach has had any effect whatever. Can you tell the committee, or any of you tell the committee? We have not been able to get that report, incidentally. We called over to Treasury. It was supposed to have been back to us in 1991. We asked for it last year, Senator Thurmond, when you had your hearing before us on your 1992 act.

But do we know of any scientific or studied report relative to advertising and its effect?

Senator THURMOND. Mr. Chairman, I do not have any statistics. I understand it has helped. It would help even more if the alcohol people, the alcohol industry would print this in larger figures. We have been concerned that the warnings are not printed in figures large enough now.

The CHAIRMAN. It must have had some effect because, of course, the hard alcohol folks they voluntarily took their ads off of television. There is no law about that now. And they have done it on a voluntary basis, so the industry itself must think there is some effect.

Now the counterpoint is that though we only do it now for brand promotion and brand choice, but that is another point. I want to move on.

Senator THURMOND. Mr. Chairman, could I mention just a few. I have got two pages of organizations which have endorsed this bill. Could I just mention 8 or 10 of them?

The CHAIRMAN. Mention them, and all of them will be listed in the record, yes, sir.

Senator THURMOND. Thank you very much. American Academy of Child and Adolescent Psychiatry; American Academy of Family Physicians; American Academy of Health Care; American Academic of Pediatrics; American Association for Marriage and Family Therapy; American College of Nurses and Midwives; American College of Preventive Medicine; American Home Economic Association; American Medical Association; American Medical Students Association; American Nurses Association; American Psychiatric Association; American Psychological Association; American Public Health Association; American Society of Addiction and Medicine; The Committee for Children; Consumer Federation of America; Latino Council on Alcohol and Tobacco; the Organization for Obstetric, Gynecologic, and Neonatal Nurses; National Alliance of Black School Educators; National Congress of American Indians; National Parent Teacher Association; Physicians' Committee for Responsible Medicine; Betty Ford; C. Everett Koop, Medical Doctor, Former Surgeon General; March of Dimes; Mothers Against Drunk Driving.

I just mentioned a few and I would ask unanimous consent that this entire list be printed in the record.

The CHAIRMAN. It will be included.

Senator Simon.

Senator SIMON. Yes. I do not have any statistical information, but I think the proof that this could have some effect is the vigorous lobbying of the alcohol industry. They would not be out there lobbying so hard if they did not feel that this advertising would have some impact.

The CHAIRMAN. Did you have something to say?

Mr. KENNEDY. Just very briefly with regard to the point on the first amendment, Mr. Chairman, the fact is that there have been a number of Supreme Court cases that have set precedent on this issue. Second, I would suggest that if we just look at what has happened with the tobacco industry, that that is a clear demonstration of when there is serious risk provided to the American people, that the American Government has a responsibility to let them know of that risk. And there is no killer in this country greater than alcohol abuse.

The CHAIRMAN. Senator Burns.

Senator BURNS. I have no questions, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. Just one or two, Mr. Chairman. As I understand the testimony of all three of the sponsors, your intention is not to prevent the advertising of beer, but it is instead to increase public information as to the risks of using alcohol. Is that correct?

Senator SIMON. That is correct.

Senator THURMOND. It is not to prevent it. It is simply to warn the people when they drink alcoholic beverages of the dangers.

Senator DANFORTH. And if the effect of the legislation were, as some have expressed, to remove advertising from the air, then that would defeat the purpose of the legislation? In other words, the purpose of the legislation is to inform, so if there were not any advertising at all there would not be any tag lines and there would not be any information.

Senator THURMOND. Well, of course, this applies not only to radio and TV but to magazines and things of that kind. In other words, it is not just confined to TV and radio. But if they did not advertise at all, that would be still better.

Senator DANFORTH. Well, that is a very frank statement. Is that the position of Congressman Kennedy and Senator Simon? Because my understanding was that—Senator Simon, you said that you thought the public was entitled to a warning and it was your idea to get the warning out there in front of the public. And you saw this as a way of presenting the warning.

Senator THURMOND. If you advertise. If you advertise.

Mr. KENNEDY. Senator, I think, as I understand your point, the risk would be some in the industry, although I do not think a majority of the industry in the conversations that I have had, would indicate that they were actually going to pull off the air. That is a threat that certain lobbyists have made in my office. But I think that those that speak that are not necessarily lobbyists for the industry but actually work within the industry indicate that that would not be the net effect.

Senator DANFORTH. What I am asking, really, is what the intention of the sponsors is.

Mr. KENNEDY. I understand. And I was just going to get to that, that obviously, the intention is to try and provide a different, as I have referred to it, sort of atmosphere where despite the fact that people are bombarded with all of these positive messages about having a drink that there is not at least some notion provided to the American people of the downside risk of drinking.

Senator DANFORTH. Right. So, in other words, it is not your intention to prevent the elimination of advertising for beer, but instead to provide information which in your view is not now sufficiently available?

Mr. KENNEDY. That is correct. And I would suggest, Senator, that leaving it up to a voluntary standard by the industry of their so-called responsible drinking campaigns is really a pittance in comparison to the tremendous number of ads that promote alcohol use.

Now, as Senator Simon indicated, I think that there is some flexibility on behalf of at least the three of us with regard to either the specific warning labels. We are looking at this issue in some other light. This is, in fact, I think, the most responsible way that we, thus far, have found to deal with the tremendous number of ads. But if you have other concepts, I am sure we would be open to thinking about it and working with you.

Senator THURMOND. Mr. Chairman, I would just like to mention this. It is not to prohibit advertising, but if you are going to advertise, then inform the people of the dangers of alcohol.

Senator DANFORTH. I understand. Thank you. Senator Simon.

Senator SIMON. I concur in Congressman Kennedy's statement. The aim is not to stop the advertising. The aim is to say to the public there are dangers here. And I think we have to let the public know that there are dangers. I would like to see this committee fashion something that gets that out there.

Senator DANFORTH. Thank you all very much for your testimony.

The CHAIRMAN. Senator Lott.

Senator LOTT. Thank you, Mr. Chairman. I just want to say to the panel that they certainly make a very strong case for their position, and I look forward to working with them and trying to find legislation that can do the job that we can hopefully all live with. Thank you.

The CHAIRMAN. The committee is indebted to each of you. As a panel, you all have presented a most forceful statement, and I know the intent is with respect to health, safety, and actually saving lives. But we are going to save money. We have had the best hearing that is going to be held in the Congress this year on health cost containment, just what you have attested to right here today.

So, we will keep the record open for questions, and you can sit with the committee if you wish. We are going to move on to the next panel. Thank you each, very much.

Senator THURMOND. Mr. Chairman, we are fortunate today to have with us a very outstanding witness, I think, Coach Dean Smith, coach of the University of North Carolina, the NCAA 1993 National Champions. He is a native of Kansas, coached at the University of North Carolina for 31 years. He is an outstanding spokesman on this issue, and if you would care to hear from him at this time we would be very pleased.

The CHAIRMAN. We are going to call the panel up, and we will recognize him first. We understand he has a plane he is trying to catch. So, let us have Mr. Michael Dorris, Mr. Dean Smith, Mr. Steven Shiffrin, Mr. Larry Wallack, Ms. Joyce Brune, and Mr. Joseph Wright.

As they are coming forward, of course, Dean Smith has been properly introduced, and Mr. Dorris is of Kalispell, MT; Mr. Steven Shiffrin is law professor at Cornell; Mr. Larry Wallack is professor in the School of Public Health at the University of California, Berkeley; Ms. Joyce Brune is from Corpus Christi, TX; and Mr. Joseph Wright is with the Children's National Medical Center here in Washington.

Dean, I bet on you long before you got to the finals. [Laughter.]

And we are glad to get one of your students coaching us down there at the real Carolina. [Laughter.]

You are going to find that he is going to come and bite you.

We will start here with Mr. Smith, first.

STATEMENT OF DEAN SMITH, UNIVERSITY OF NORTH CAROLINA

Mr. SMITH. Thank you, Senator Hollings, and certainly, I have been to one of these before and I was not prepared, nor am I necessarily prepared this time. It was on college athletics, and Senator Metzenbaum was very nice and let me ramble on for about 5 minutes. And then I watched, Howard Cossell got up and he sounded so great, and I found out he was reading notes. So, I guess that was the way to do it, but I do not feel comfortable that way, and also I just learned of this opportunity on Monday. I want to thank Senator Thurmond and all of you for allowing me to be here.

I will give something here. It is a letter I wrote in 1989 to the ACC presidents, the Atlantic Coast Conference athletic directors, and the faculty chairmen, in answer to a query by our commissioner, Gene Corrigan, a very fine commissioner. He said we have all this money from television, which of course is from beer advertising and others, and he said we want to address the drug problem in this country. And I wondered why everybody was not laughing, alcohol being a drug, and here we are using this money to go on and try to fight just after Len Bias' death and at a time when we were all concerned and certainly the Senate was very much in that order.

But what was so funny was all this I say in this letter, that it really is—I think we all realize that cocaine and heroine are tremendous harm to the person and to this country, but yet maybe even beer could be a little dangerous from the standpoint that it is taken for granted so much. It is a gateway drug for the young kids. And so that is why I am glad that this bill particularly speaks to all alcohol in addressing that issue.

But to show my power in the ACC, it is rather funny, after I wrote this strong letter and now this year, the last 2 years, the end of the ACC telecasts, some of which South Carolina was on, Senator Hollings, at the end they would simply say—not the end, but every advertising sponsor would be Budweiser. They would say, "And now, a good word from our friends at Budweiser," as if somehow we do not say our friends from Dodge, Buick, or something.

And apparently there is a concern in the industry that they want to be known, their image, as friends. And certainly, friends, I mean, my gosh, I think we all know alcohol is the leading—the leading—killer of teenage people in this country, and alcohol-relat-

ed accidents, and that is not very much friends. And yet they are doing a great job in their advertising, I think we all realize that.

But I hate to mention it, but I would like to—and I am not taking more than 2 minutes in our four corners—to talk a little bit about advertising, as well, because I think that is a real problem we have. Because they spent millions of dollars in sports advertising.

Why did they target sports, they, the beer industry or the wine industry, target sports? It crosses all sections. Otherwise, you notice shoe companies advertise on games, too, because those kids buy shoes. And I am talking about 9, 10, 11, on through 21, the legal age, is all watching sporting events and they all see these ads, and it is something that they cannot help but think of it—like Pepsi Cola, Coca Cola—especially if they are 10 or 11, but there is a difference, and that difference is known.

We have already miseducated our youth by saying we do not advertise scotch or vodka or distilled liquor on TV, as if that is a difference from beer or wine. I have heard this from our university medical people, that one cocktail, say 2 ounces of scotch mixed with water or something, is the same as a bottle of beer or a glass of wine. So, I have never understood why they let beer be advertised but not vodka or distilled liquor.

And I know maybe I will get an answer to this in a minute, but the real problem, as I see it, and I do not mean to take your time, is they just do a tremendous job on television ads for these kids.

Who was it—and Senator Danforth, I know you are from Missouri. Is anybody from Michigan. Bubba Smith from Michigan State was the great athlete who did—the taste great, it is lighter. And a group of high school kids, he went into a high school, they started shouting this ad. He said, "I am not doing this ad again," because it was to young people, and young people should know the difference.

As Representative Kennedy said so very well, the beer ads are remarkable. I even like watching basketball a lot. I see a lot of this and always fast forward. I watch tape and fast forward through, and one time I even was watching a real game and tried to fast forward, I am so used to it.

But what happens in on the ads they even have a girl dunking over a boy, and of course at the end there are always good looking girls, always handsome young men, and they always reach for whatever the beer at the end and they are always happy. Would it not be great if they had to follow up that, and like at my house one time my son Scott brought a guy home. They went out, "to have a good time." At 1 a.m. I heard this noise up in the bathroom, and this guy that he invited in, his head was in the commode, you know? And I said, "Did you have a good time?" And he went like this.

And I think we maybe make them instead of saying—having these are great, but too show maybe somebody, a girl that is about ready to pass out and a date rape taking place or somebody being killed as Senator Thurmond's daughter was, so I just think it is very misleading on these beer ads and it is so hard to talk about it without saying—you know, why not let Revlon—let us say—I will use that as an example.

If Revlon had a great way to make you look pretty and handsome, but it could be harmful to you, but yet it is going to be the leading killer of teenagers, how many of us would vote to have that on television? So, I guess in the end I am just saying I just hope this passes, what you have now, and take a look in the future, much the way of the cigarette industry. And believe me, I have a beer and I used to smoke a lot. I am not standing up here saying I am better than anyone, but I do not want the kids—they are hearing this and seeing it on television constantly and do not know the difference.

Thank you for allowing me to be with you.

The CHAIRMAN. Well, coach, that is a very powerful statement. I know you have to catch a plane, so I am going to yield to my colleague, Senator Burns.

Senator BURNS. Mr. Chairman, thank you very much. I just wanted to break in.

Dean, I am a long-time admirer of you. I have to admit that. You keep beating up my friend—I roomed with Norm Stewart in college. And he said, "Gosh, for a little short fellow, you are sure effective."

Mr. SMITH. They have beaten us more.

Senator BURNS. But I have some questions for the panel. I want to welcome Mr. Dorris from Kalispell, too. I have to go to an appropriations meeting now, but I thank you for your testimony, and it is very powerful testimony. And I thank the chairman.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. I also am a great Dean Smith admirer. You do not believe that drinking is inherently bad or destructive. It is the abuse of drinking.

Mr. SMITH. Obviously, yes, Senator.

Senator DANFORTH. Or drinking under certain circumstances on the job or while driving or while pregnant, that kind of thing?

Mr. SMITH. I just saw the USA Today 2 days ago where the pediatrician said not at all for the pregnant lady. Of course, I do not have that problem.

Senator DANFORTH. But in any event, it is the misuse, and it is not just the use.

Mr. SMITH. Right.

Senator DANFORTH. Similarly, driving a car could be abused, too.

Mr. SMITH. But as you know, Senator, the advertising is trying to create a need that we want to do this without being talked into it. You know, you choose that. There is a difference.

Senator DANFORTH. But my point is simply that it would be my view that smoking is something that is just inherently destructive. I mean, there is no positive result from it. That is not necessarily the case from, say, having a drink.

Mr. SMITH. Coming from someone who smoked, that after-dinner cigarette sure tasted awfully good.

Senator DANFORTH. But you read things these days about how if you have a drink today it lowers your cholesterol or whatever.

Mr. SMITH. If we could pass that law, that would be great.

Senator DANFORTH. But that is my point. There is a difference between smoking on one hand and drinking on the other, and with drinking it would at least be my view, and I think it would be

yours, that drinking is not inherently something that is bad or destructive, rather, it is the misuse, the abuse.

Mr. SMITH. That is right.

Senator DANFORTH. Thank you.

The CHAIRMAN. Coach, we are going to excuse you. Before you leave, I should note that Senator Nancy Kassebaum, your fellow Kansan, was by early to welcome you.

Mr. SMITH. I am sorry I missed her.

The CHAIRMAN. She is sorry to have missed you. But if you want to catch that plane, you can be excused. And we will now take the rest of the panel.

Mr. SMITH. I have about 15 minutes. I would like to listen, but I appreciate that.

The CHAIRMAN. Very good. Well, we appreciate it. Dr. Wright.

STATEMENT OF DR. JOSEPH WRIGHT, CHILDREN'S NATIONAL MEDICAL CENTER

Dr. WRIGHT. Good morning, Mr. Chairman. My name is Dr. Joseph Wright. I am assistant medical director of the Emergency Medical Trauma Center at Children's National Medical Center here in Washington. I am also an assistant professor of pediatrics at the George Washington University School of Medicine and Health Sciences.

It is a pleasure to appear before you and the other members of the committee on behalf of the American Academy of Pediatrics. We look forward to opportunities for the academy to serve the interest of all children and youth who are under our care.

The Sensible Advertising and Family Education Act of 1993, which would place heaith and safety messages on all print and broadcast alcohol advertisement, offers just such an advocacy opportunity. In our judgment, this legislation would, as part of broader public education activities, help to protect impressionable young children from clever, alluring marketing tactics, and would also help restore some responsible balance to the onslaught of alcohol advertising adversely affecting, if not directly aimed at, teenagers.

But SAFE would do more than help inform Americans of the ravages of alcohol abuse on vulnerable children and adolescents. It would begin to underline dramatically the terrible toll which alcohol abuse takes on our society at large.

In my practice of pediatric emergency medicine, my colleagues and I are front line witnesses to the heavy burden of alcohol-associated illness and injury exacted upon our youth. Fully one-third of the motor vehicle injuries among adolescents treated at our pediatric trauma center are alcohol related. Data from a recent study reveals that nearly one-half the youthful victims of gunshot wounds presenting to a Midwestern children's hospital had a positive blood alcohol test.

But the carnage is not limited to the vehicular and interpersonal violence associated with alcohol use. Indeed, the direct effects of this drug itself, in the form of acute alcohol poisoning, is a problem I have dealt with directly.

Mr. Chairman, I will use my remaining few minutes to relate my clinical experience in this area. In the fall of 1990, I had occasion to manage three teenagers transported by ambulance to our emer-

gency department suffering the effects of acute alcohol poisoning. In each case, consumption of a beverage known on the streets as "liquid crack" was implicated.

This prompted my review of all cases of alcohol ingestion that had presented to our institution in the preceding year—15 adolescents with an average age of just 14 years were identified with acute alcohol poisoning. In 10 of these cases, a high-potency, fortified wine product marketed under the trade name Cisco was cited as the sole agent of consumption.

One-half of the Cisco patients were unresponsive upon arrival with unstable vital signs. Two required life support on a ventilator and intensive care therapy. The mean blood alcohol concentration amongst these patients was 21 percent, more than twice the legal limit. The highest documented level was 33 percent, a concentration approaching lethal levels in children.

Eight of the patients completed a followup questionnaire. All eight perceived Cisco to be a brand of low-potency wine cooler and thought each bottle was designed for single-serving consumption. The percent alcohol content on the label had not been noticed by any of the youngsters, and none of them knew that just one 12-ounce bottle of Cisco was equivalent to five shots of 100-proof vodka.

Based on this information, we concluded the alcohol poisoning risk associated with this product was primarily due to misconceptions about its potency and miseducation about the dangers of binge alcohol consumption in general. Our findings are consistent with the results of a 1991 survey published by the Office of the Inspector General in which one-third of students did not understand the intoxicating effects of alcohol and 80 percent did not know the relative strengths of different alcoholic beverages.

Mr. Chairman, clearly there is a tremendous need for increased education, awareness, and consciousness-raising around this issue. The academy believes that the SAFE legislation is exactly the right course for Congress to take. It is absolutely critical that our children and youth hear these proposed health and safety messages. Let us move decisively to enact the Sensible Advertising and Family Education Act during the current Congress.

[The prepared statement of Dr. Wright follows:]

PREPARED STATEMENT OF DR. JOSEPH L. WRIGHT

Good morning, Mr. Chairman. My name is Dr. Joseph L. Wright. I am Assistant Medical Director of the Emergency Medical Trauma Center at Children's National Medical Center in Washington, D.C. I am also an Assistant Professor in the Department of Pediatrics at the George Washington University School of Medicine and Health Sciences. It is a pleasure to appear before you today on behalf of the American Academy of Pediatrics, whose 45,000 fellows are dedicated to the promotion of infant, child and adolescent health. We look forward to opportunities for the Academy to serve the interests of all the children and youth who are under our care. The Sensible Advertising and Family Education (SAFE) Act of 1993 (S. 674), which would place health-and-safety messages on every print and broadcast alcohol advertisement, offers precisely such promise.

In our judgment, this legislation would, as part of broader public education activities, help stem the tide of newborns who suffer perfectly preventable birth defects such as fetal alcohol syndrome (FAS); it would help protect impressionable young children from clever, comic-strip marketing in the vein of Spuds Mackenzie; and it would help restore some responsible balance to the onslaught of alcohol advertising adversely affecting (if not directly aimed at) adolescents, who are particularly at peril. But SAFE would do more than help inform Americans of the ravages of alco-

hol abuse on vulnerable infants, children and adolescents, it would also begin to underline dramatically—on the public airwaves and throughout the press—the terrible toll which alcohol abuse takes on our society at large.

The American Academy of Pediatrics has long recognized the toll alcohol takes on our infants and young people. A recent step taken by the Academy was the release two days ago of a policy statement recommending that in order to protect their developing fetuses, women who are pregnant or planning a pregnancy should not drink any alcohol. We believe that there is no established "safe dose" of alcohol. This policy statement strongly supports the language contained in the SAFE legislation.

The $70 billion alcoholic beverage industry strongly opposes this legislation because it appears that public policy may be gaining momentum in efforts to "deglamorize" alcohol. The Academy applauds this awakening to the health risks associated with alcohol abuse, and believes that the SAFE course is exactly the right course for Congress to take. We wholeheartedly support this common-sense legislation whose aim is to provide some modest counterweight to the $2 billion worth of sophisticated ads which beckon children and youth. We commend Senators Thurmond and Simon and their colleagues for sponsoring this bill, and we deeply appreciate the decision of the panel, Mr. Chairman, to hold this timely hearing.

The purchase of alcohol by those under the age of 21 is illegal in all 50 states and the District of Columbia, yet alcohol remains by far the most used and abused drug among young persons in the United States today. Alcohol abuse by adults, of course, only worsens the plight of infants, children and adolescents. Its reach extends to the home, to the highways—even to the womb.

Fetal Alcohol Syndrome and Fetal Alcohol Effects (FAE) afflict thousands of infants every year in this nation. FAS, the frequency of which is now more common in the United States than that of Down Syndrome, is a leading cause of birth defects with accompanying mental retardation. It is entirely preventable. As many as one in six women in the peak childbearing years of 18-34 drink alcohol at levels which make it absolutely critical that they hear these proposed health-and-safety messages.

American children, by the time they reach age 21, will have seen tens of thousands of advertisements promoting alcoholic beverages. Those of us with children at home know that today's youngsters are as familiar with Spuds Mackenzie as they are with Boatman or Teenage Mutant Ninja Turtles. And the message these children get from glossy alcohol ads is not that this drug can cause serious health risks—rather, it is one of sweeping social acceptance of alcohol consumption.

For adolescents, the risk gets worse every day. As pediatricians, we insistently warn parents and counsel our young patients that all too frequently "the first drink" occurs around age 12. We emphasize that it takes less alcohol to produce impairment in a youngster than in an adult. We inform our patients that today roughly 4 to 5 million young persons are dependent on alcohol or are problem drinkers. We underscore for parents that children of alcoholics have a four times greater risk of developing alcoholism than do children of non-alcoholics. Finally, we detail the horrible toll drunk driving takes on adolescents and the devastation it wreaks on their families.

But our vital health-and-safety messages are not getting through. Children still receive mixed signals. The so-called war on drugs merely winks at alcohol. Meantime, relentless print ads and radio and television commercials continue to glamorize alcohol, associating its use with everything from material success to physical and sexual prowess.

Despite their protestations, the industry sales pitch is hardly about changing brands—it is about adopting brands; it is in effect about luring children and youth to drink. As pediatricians, we know that we must speak out on this issue in support of American youth. The relatively few advertisements sponsored by alcohol manufacturers—ostensibly to promote "responsible" consumption—are much too little much too late. Health-and-safety messages on all print and broadcast ads are urgently needed now to complement the efforts of pediatricians, of political leaders, of schools and, most of all, of parents, as together we seek to afford infants, children and adolescents the reasonable protections which they deserve.

Mr. Chairman, according to 1988 figures released by the National Institute on Drug Abuse, about 2000 people that year were killed by cocaine—which, rightly has been declared a national enemy. However, alcohol killed more than 125,000 people, many of them adults who, understandably, never heard the message that alcohol is the most addictive and widely consumed drug in this nation. Let us ensure that from this day forward our children and youth will hear that message—and hear it clearly. Let us move decisively to enact the Sensible Advertising and Family Education Act during the current Congress.

The CHAIRMAN. Thank you very much, and I will ask all the witnesses to please summarize your statements. Your full statements will be included in the record, and we would ask you to try and summarize so all the witnesses here can be heard and another panel that we are going to follow on. Mr. Dorris.

STATEMENT OF MICHAEL DORRIS, CALISPELL, MT

Mr. DORRIS. Thank you, Senator. I am not a paid professional lobbyist, I am an ordinary citizen. Basically who I am is a living encyclopedia of what does not work to assist one child born prenatally exposed to too much alcohol, my eldest late son, Abel Dorris.

I can tell you that 15 years of special education did not work, two brain surgeries did not work, my anger did not work, my patience did not work, and my love did not work. Do I sound cynical? I did not used to be this way, but I am the product of a total of 50 years of dealing with alcohol-damaged children, for not only does my eldest son, the subject of my book, "The Broken Cord," suffer from fetal alcohol syndrome, but my two other adopted children suffer from fetal alcohol effect.

My family and I have paid out well over $250,000, not counting what our insurance has covered, for primary and secondary school tuitions, counseling, doctors of every sort, medical procedures, Outward Bound for Troubled Youth, and private camps for the learning disabled. We have managed to try every single avenue that has been suggested to us by well-meaning professionals who might know what would benefit our sons and daughter, and nothing has consistently worked for more than a few months.

Our surviving older children, now all adults or nearly so, cannot seem to function independently, hold jobs, tell the truth, manage money, or plan a future. They, along with many others of the more than 50,000 FAS- and FAE-damaged children born every year in America unnecessarily, have at one time or another been arrested or otherwise detained for shoplifting, inappropriate sexual conduct, and violent behavior.

Despite our efforts to protect them, they have periodically come under the influence of people who, for instance, worship Satan, or who take advantage of them physically, mentally, or financially. They maintain no enduring friendships, set for themselves no realistic goals, and call upon no bedrock inner voice to distinguish right from wrong, safe from dangerous. On the average full FAS children cost the American taxpayer about $1 million a year per capita to get through their first 5 years of life.

In the 3½ years since "The Broken Cord" was published, and a year since the dramatic film based upon the book was presented on ABC–TV, we have heard from literally thousands of parents, rich and poor, religious and agnostic, of all ethnic groups, in every economic strata, from every State.

Some live in cities, some in small towns, some on reservations. Some are adoptive parents like us, some are biological parents. All love their children, almost none has given up hope, but none of them knows what the hell to do next.

Recently, however, there came one truly hopeful letter from Brookings, SD, sir, and it was from a woman who had adopted an

infant from the Yankton Reservation about 5 months ago. She and her husband read my book, "The Broken Cord," and became very alarmed.

They called the social worker who had made the placement, who looked up the record and informed them that in fact the birth mother had been a heavy drinker throughout her life. The adoptive parents were devastated and they took the child for examination.

Three days later the social worker called back and said, "I have got news for you. The birth mother who drank from the time she was 12 years old saw on television a movie called, 'The Broken' something and stopped drinking immediately for the course of her pregnancy." That child is healthy. Those parents will never have to sit here and tell you a sad story.

Warnings work. They save lives.

For me, the question boils down to a simple analogy. Imagine that we saw a blind woman holding a child by the hand attempt to cross a busy street. The traffic was fast, she guessed wrong, and before our eyes her child was struck by a truck and killed, a tragedy we will never forget.

Then a year later we come by the same intersection again and there is the woman, but with a new child. The light is against her, but she does not see and tries to cross to the other side. The child is hit, terribly injured as we stand by helplessly and watch.

The next year it happens again, and the next, and the next. How many times must it happen before we become involved, before we take the woman's arm or hold up our hand to stop the cars, or carry her child, or at least warn her to wait until the signal turns green?

If we turn our backs and walk away, we stop being innocent bystanders and become complicit in the inevitable accident, accessories after the fact.

FAS is the leading preventable cause of birth defects, and its incidence is on the rise. Its impact on a life is irrevocable and permanent. The national Centers for Disease Control reported last Thursday that recorded cases for "full FAS more than tripled between 1979 and 1992, but actual cases may be 10 times higher."

We are talking about tens of thousands of people born unnecessarily damaged every year. Little wonder, therefore, that this past Monday the American Academy of Pediatrics, after an exhaustive study, joined the Surgeon General of the United States, the American Medical Association, and many others in advising its members that, since there was no known level of maternal alcohol consumption during pregnancy guaranteed safe for normal fetal development, total abstinence from the time of conception through delivery was the most prudent course to follow.

Now, I ask you, do the women of this country not deserve to hear this considered judgment? Do they not have a right to full and candid disclosure in making their decisions if accurate information may lead to the avoidance of a tragic and irreparable mistake?

Though perhaps not every pregnant woman who reads or hears a warning will stop drinking for 9 months, maybe 1, 10, 1,000 will. Maybe a husband or a parent or an older child will heed the informational message on a bottle or in an advertisement and act to help a woman close to them quit or cut back. Maybe over time it

will simply become common knowledge that alcohol and pregnancy do not mix, that the time to celebrate a new life is after a healthy birth has taken place.

What is the harm in trying? Surely the liquor industry would not face bankruptcy if every pregnant woman were advised to stop drinking for a mere 9 months per child.

Thank you.

The CHAIRMAN. Thank you, Mr. Dorris. Ms. Brune.

STATEMENT OF JOYCE BRUNE

Ms. BRUNE. I am here today because I lost my daughter from alcohol poisoning.

She was a student at college. They decided to have a party one night. I had talked to her that very evening on the phone. I was not alarmed about the party. I knew my daughter.

That evening, at the end of the party, there were four individuals taking shots, other individuals coming in to the room taking a shot and leaving. That evening, an hour later, 45 minutes later, they carried my daughter to her dorm room, put her to bed, put her face down as well as they knew to take care of her, and because their knowledge was, you go to sleep, you sleep it off or you throw up and you are fine, my daughter died that night.

Those college students, none of them, not one of them knew that you could die of alcohol poisoning. There were students that went to that same college, never drank a day in their life, but when they got to college, it was the in thing to do.

My daughter was a stickler for warning labels. I have got a prescription that I had filled a month ago. It does not have one, it has got four—it is an antibiotic, but it has got four warning labels on it. You cannot miss them. If there would have been a warning label on that bottle that night, my daughter would still be here today with us.

I have taught my daughter what I could, what I knew about hard drugs, cocaine, marijuana. She did not do these. I taught her what I could about sex, do not be promiscuous, be a lady. She died a virgin, the one thing I did not know was the common knowledge that alcohol and rapid consumption could kill you. I know it now. It is too late. I did not have that chance to teach her.

Let the public know. Let the parents know so they can teach their children this. Do not let anyone go through what I have gone through. I do not want anyone else to suffer. Let them know, give them the common knowledge. Once they have that knowledge, they can go a long way with it. They can save many lives.

There are at least 4,000 teenagers today that die of alcohol poisoning. 100,000 die of alcohol-related accidents—drowning, automobile accidents, falling out of a window, different things—and I think we as parents, as individuals, should teach—help the teenagers. Not just teenagers, it is down into the elementary now. The junior high are drinking. There is a lot of alcoholics today.

Teach them what we know, and they need help, they need our help. We have the knowledge.

Thank you.

The CHAIRMAN. Thank you very much. Mr. Wallack.

STATEMENT OF LAWRENCE WALLACK, DOCTOR OF PUBLIC HEALTH, SCHOOL OF PUBLIC HEALTH, UNIVERSITY OF CALIFORNIA AT BERKELEY

Dr. WALLACK. My name is Lawrence Wallack. I am here today on behalf of more than 30,000 members of the American Public Health Association and the Marin Institute for the Prevention of Alcohol and Other Drug Problems to offer support for S. 674, the Sensible Advertising and Family Education Act of 1993.

I am an associate professor and head of the Community Health Education Program at the School of Public Health, University of California at Berkeley. And I am proud to tell you that 1993 represents the 20th year that I have been involved in different aspects of research, education, and training regarding alcohol-related issues.

I want to make three points during this testimony, which will summarize my written testimony which has been provided to you.

First, I want to emphasize that we are making progress in educating youth about alcohol problems, but we have a long way to go. In our efforts to educate youth about drugs, we have largely neglected America's No. 1 drug, America's No. 1 killer of youth, America's No. 1 thief of hope and opportunity, America's No. 1 destroyer of dreams. We have neglected alcohol. And by neglecting alcohol, we have put youth at increased risk.

One of the alarming pieces of information is that the age for first use of alcohol is actually moving in the wrong direction. The age of first use for alcohol is decreasing. More kids are drinking earlier than has been the case before. This is opposite what it is for marijuana and tobacco, where we are doing a better job.

Also, in 1992, approximately 20 percent of eighth graders reported that they had gotten drunk in the past year. Walk into an eighth grade classroom, one out of every five of those children have gotten drunk in the last year. It does not make sense. It is a big problem.

Certainly, there are many factors that influence the drinking behavior of young people. You can argue from now until forever about what effect advertising has on which children. You can raise methodological issues. You can call people names. And I have been called names about this. And you can find research to support different views. However, basic research, common sense, and the wisdom of parents and public health professionals lead to the obvious conclusion that billions of dollars of alcohol promotion that glamorizes drinking does influence youth. There is too much at stake to make believe that advertising can somehow magically pass youth and not affect any of them while simply having an effect on adults.

Alcohol advertising is a significant source of education for youth. They learn about alcohol from advertising. We know this from research and the public knows this as well. A national survey funded by the Century Council, an alcohol industry education group, found that 73 percent of adults in a national survey believe that alcohol advertising is a major contributor to underage drinking.

The commonsense, practical, and research basis of advertising influence is sound. Let us cut through the denial on this issue. Advertising influences children.

My second point is that health and safety messages are an important cornerstone for prevention efforts. They are not a panacea, but they are a very important basis on which to build other efforts. I have been surprised with the peer review research that has been supported by the National Institute on Alcohol Abuse and Alcoholism that shows, after only a 6-month period, that warning labels on alcoholic beverage containers influenced consumers.

Significantly, those who reported seeing the warning label were more likely to say they had had conversations with others regarding topics of drunk driving and drinking during pregnancy, two of the issues that they were being warned about. Most striking, however, was that those who saw the warning label, according to this research, were more likely to report limiting their drinking and driving behavior.

Extending these health messages to advertising will mean that many more will be exposed on a regular basis to health information. It means that those around the drinker will be more likely to take action to help. It means that a message of caution and concern about alcohol will be the norm, replacing the message of reckless abandon and immediate gratification.

My third point is that the education campaigns of the alcoholic beverage industry really are more public relations than public interest. They are no substitution for important and serious public policy approaches, such as the SAFE bill. The alcoholic beverage industry will likely point to their programs and claim that they are making a difference. As far as I know, there is no research evidence supporting the effectiveness of the so-called moderation campaigns of the industry.

On the contrary, most of the population thinks that the alcoholic beverage industry is part of the problem, rather than part of the solution. A national survey, again, conducted for the Century Council, found that only 10 percent of respondents thought that the alcohol industry should be actively involved in working to reduce alcohol abuse and misuse in the United States.

The report goes on to say that, "while the public clearly views the industry as part of the problem, they just as clearly do not conceive, at this juncture, of the industry as part of the solution."

Preliminary research, that I contributed to, on the Coors and Anheuser-Busch moderation campaigns found that for a majority of the youth exposed to the message thought the message was: "It is OK for teens to drink beer in moderation"; and about 40 percent of the youth, college and high school students, we surveyed thought the message was: "It is OK for older teens to get drunk on occasion."

In sum, S. 674 is the kind of legislation that makes for good public policy and good public health policy. The passage of the Sensible Advertising and Family Education Act of 1993 is good public policy because it will provide basic information about one of our country's most important risk factors; it will target the entire population, not just heavy drinkers; it will support other educational and community efforts; it will encourage more discussion about alcohol problems; it has broad public support from the vast majority of Americans—91 percent in a recent survey supported warning labels in

general; and it reflects a scientific base of knowledge gained from our experience with warning labels.

It is good public health policy because it will help save lives and prevent unnecessary tragedy. It will make education work better for parents, teachers, and professional health educators.

And, finally, I just want to say, when thinking about the health of children, there is a fundamental question about whose advice we want to take. Do we want to listen to physicians, to educators, the National Parent-Teachers Association, and nurses, or do we want to listen to the alcohol beverage industry on this issue?

I would maintain that we are better off with physicians, public health professionals, educators, parents, and others who are interested in doing something on this problem.

Thank you.

[The prepared statement of Dr. Wallack follows:]

PREPARED STATEMENT OF LAWRENCE WALLACK

My name is Lawrence Wallack and I am here today on behalf of the more than 30,000 members of the American Public Health Association and the Marin Institute for the Prevention of Alcohol and Other Drug Problems to offer support for S. 674, The Sensible Advertising and Family Education Act of 1993.

I am associate professor and Head, Community Health Education Program, School of Public Health, University of California, Berkeley. I have been involved in research, education, and training regarding alcohol-related problems since 1973 and have produced more than 90 articles, books, book chapters, research reports, and papers on topics related to health promotion and prevention, most of them with a primary focus on alcohol issues. I was an advisor to former Surgeon General Koop on the development of recommendations to address drunk driving and have been a consultant to the World Health Organization, various philanthropic foundations, and many local, state, and federal agencies.

I want to address three key points today. First, the need for health messages in advertising. Second, the surprising efficacy of warning labels on alcohol beverage containers. Third, the limits of alcohol industry educational campaigns.

1. We need the type of public policy reflected in S. 674 because it is essential to counter the misinformation inherent in alcohol advertising and provide support for the educational efforts of parents, teachers, and health professionals.

In our efforts to educate youth about drugs we have largely neglected America's number 1 drug, America's number 1 killer of youth, America's number 1 thief of hope and opportunity, America's number 1 destroyer of dreams. We have neglected alcohol and by this action we have been unfair to our youth and have put them at increased risk.

If you ask college presidents[1] or high school coaches[2] they know that the number 1 problem on their campus is alcohol. Yet the overwhelming message from an avalanche of advertising is that alcohol isfine. On television, for 30 seconds the world is a scintillating kaleidoscope of trim, healthy young people laughing as they plunge into one exhilarating event after another, their lives a whirlwind of excitement as they toast the good life. Billboards beckon and magazines and radio all reinforce the wrong kind of alcohol education to the youth of America. Professional health education efforts, family discussion, and a friend's urgings can, at best, often seem remote and at worst silly against the onslaught of sophisticated effort to equate drinking with the best of times.

The placement of health and safety messages in advertising is important and necessary because children, as well as adults, are influenced by advertising. These health and safety messages can provide balance and provide people with basic information about health risks that they face.

Certainly, there is controversy regarding the effects of alcohol beverage advertising and there will never be absolutely conclusive research on this topic. Yet from a public health perspective it is clear that policy to address the effects of advertising is necessary and the American Public Health Association is on record supporting reasonable limits on alcohol advertising. We do know from published scientific re-

[1] Curtis, D. "Student Drinking a Serious Worry," San Francisco Chronicle, April 30, 1990.
[2] Dorsey, V. "Prep Coaches Worry About Alcohol," USA Today, January 31, 1990.

search that alcohol advertising is a major source of socialization about alcohol for youth—they learn about how, when and where to use alcohol, and what to expect when they use it. We also know that exposure to alcohol advertising reinforces existing youth drinking, contributes to higher levels of drinking among youth, and, for those youth that do not yet drink, increased intention to drink when they get older.[3,4] Advertising effects are not just limited to youth; higher levels of adult consumption are associated with advertising exposure.[5] In a recent paper commissioned by the National Institute on Alcohol Abuse and Alcoholism, Charles Atkin, PhD, a distinguished communication scholar who has conducted extensive research on advertising effects indicated that, while not definitive, "* * * alcohol advertising stimulates higher consumption of alcohol by both adults and adolescents * * * The key question is no longer whether advertising influences drinking, but what degree of impact occurs."[6]

The alcohol industry will tell you that its advertising does not target or influence youth. Many do not take this as a credible claim. For example, a national survey conducted by the Wirthlin Group for the Century Council, an alcoholic beverage industry sponsored anti-abuse coalition, found that 73 percent of adults believe that alcohol advertising is a major contributor to underage drinking.[7] I am willing to accept, for purpose of argument, that the alcohol industry does not intentionally target youth. Whether or not youth are deliberately targeted by the alcoholic beverage industry does not really matter. What does matter is that the children of America are widely exposed to alcohol advertising and are influenced as a result of this exposure.

Some of my past research on the relationship of televised beer commercials with beliefs and drinking expectations of a scientific sample of 468 10-13 year olds is useful to consider here. This study, funded by the AAA Foundation for Traffic Safety, was conducted with two colleagues.[8]

The findings of this research indicate that:

1. Children are widely exposed to beer advertising through sports programs.
2. Children see and remember beer commercials and the brands being advertised.
3. Children's beliefs about beer consumption are influenced by these commercials.
4. Awareness of beer commercials is related to increased expectation to drink as an adult.

The results of the study are clear: televised beer commercials influence beliefs and behavioral expectations of children. Even when the influence of important demographic and social variables such as parents' drinking, gender, and age are controlled, the relationship is maintained. The key findings of the study are consistent and statistically significant. A subsequent analysis, more statistically sophisticated, concluded, "awareness of advertising causes children to be more favorably predisposed to alcohol and drinking."[9]

The alcohol industry maintains the position that it does not target those under the legal age. For now let us assume this to be true. However, the position that the billions of dollars spent annually to promote alcoholic beverages does not have an impact on youth both defies common sense and ignores a serious public health risk for this population. The denial of responsibility to our nation's youth is to be a party to encouraging them to risk productive futures for the fantasy and empty promises of alcohol advertising. We can no longer make believe that advertising can somehow

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[3] Atkin, C., Hocking, J., and Block, M. "Teenage Drinking: Does Advertising Make a Difference?," Journal of Communication, 34, pp. 157–167, 1984.

[4] Aitkin, P., Eadie, D., Leather, D., McNeill, R., and Scott, A. "Television Advertisements for Alcoholic Drinks Do Reinforce Underage Drinking," British Journal of Addiction 83: 1399–1419, 1988.

[5] Atkin, C., "Mass Communication Effects on Drinking and Driving," pp. 15–34 in: The Surgeon General's Workshop on Drunk Driving, Background Papers, USDHHS, Public Health Service, 1989.

[6] Atkin, C. "Survey and Experimental research on alcohol advertising effects," paper presented to the Working Group on the Effects of the Mass Media on the Use and Abuse of Alcohol, National Institute on Alcohol Abuse and Alcoholism, Washington, DC.

[7] The Wirthlin Group, (c. 1991) No title, p. 13.

[8] Wallack, L., Cassady, D. and Grube, J. TV Beer Commercials and Children: Exposure, Attention, Beliefs, and Expectations about Drinking as an Adult, AAA Foundation for Traffic Safety, Washington, DC, Fall 1990.

[9] Grube, J., Madden, P. and Wallack, L. "The Effects of Television Alcohol Advertising on Children," Paper presented at the Annual Meeting of The Research Society on Alcoholism, Marco Island, Florida, June 1991.

[10] University of Michigan, News and Information Services, Press Release, April 9, 1993.

[11] Greenfield, T., Graves, K. and Kaskutas, L. "Alcohol Warning Labels for Prevention: National Survey Findings," Alcohol Health and Research World, in press (1993).

be designed to appeal to those only 21 and older and somehow magically pass over those who are younger. Certainly my research, and others', has shown that even preteens can be influenced by alcohol advertising.

2. Health and safety messages are effective as part of a comprehensive approach to informing the population about the risks associated with the consumption of alcoholic beverages.

Youth in America drink and put themselves at risk for tragedy. In 1992, 18.3 percent of 8th graders reported they had gotten drunk at least once in the past year and 13.4 percent consumed 5+ drinks in one sitting over the past 2 weeks. In that same survey conducted by the University of Michigan, 37 percent of 10th graders said they had gotten drunk at least once that year and 21.1 percent consumed 5+ drinks in one sitting over the past 2 weeks. The rates were even higher for high school seniors.[10]

We are making progress on educating children and using public policy to change the message environment in which they live. One part of such progress was the passage of The Alcoholic Beverage Labeling Act in 1988.

Congress passed this law with the modest expectation that warning labels on alcoholic beverage containers would serve to remind people about alcohol-related hazards. Labels were not intended as a substitute for education or as a device to change behavior.[11] To my surprise, and that of many others, the expectations of this policy change appear to have been greatly exceeded. While warning labels were always believed to be an important part of a comprehensive approach to preventing alcohol-related problems, many felt that the current warnings lacked the conciseness of language and clarity of format to get people's attention.

Research supported by the National Institute on Alcohol Abuse and Alcoholism found that only six months after the law went into effect that 39 percent of heavy drinkers overall, 39 percent of women of child-bearing age who are heavy drinkers, and 46 percent of young males who are most at risk for drunk driving saw the label. It was noted that those who reported seeing the warning label were more likely to say they had conversations with others regarding drunk driving and drinking during pregnancy—two of the topics covered in the warning. However, most striking of all was the finding from this national survey that those who saw the warning label, "were more likely to report limiting their drinking-driving behavior."[12]

What do these striking results indicate? There are two important points to be taken from this. First, alcohol issues are on people's minds and many communities are mobilizing around policy approaches to alcohol problems. The warning label was implemented in an environment that included a great deal of concern and other activity. Thus the effect of a limited intervention such as warning labels is greatly enhanced because it fits so well with other prevention and education activities. The warning labels provide legitimacy and credibility to the activities of others working in this important public health area.

Related to this is the high level of support that the American people indicate for warning labels. For example, a 1991 national survey funded by the National Institute on Alcohol Abuse and Alcoholism found that 91 percent of the population supported warning labels. In fact, of 13 different policies only warning labels showed an increase in support from an earlier survey conducted in 1989.[13] So you have the combination of people being concerned about this issue, a lot of activity happening around the issue, and support for a new policy to contribute to the solution.

Second, these findings bode well for extending these health and safety messages to advertisements where youth and lighter drinkers will be exposed to the message. The current warning labels appear to provide an important educational opportunity for drinkers but extending health and safety messages to advertising means that the entire population would be exposed to important information. Because those around the drinker are critical in prevention and treatment efforts, extending the messages into advertising can inform and support their efforts to become part of the solution. Health and safety messages will help to break down the denial that is so much a part of alcohol problems and so great a barrier to effective treatment and prevention.

3. The educational campaigns of the alcohol beverage industry are limited in the type of information presented and their potential effects. These campaigns suffer from

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[10] University of Michigan, News and Information Services, Press Release, April 9, 1993.

[11] Greenfield, T., Graves, K. and Kaskutas, L. "Alcohol Warning Labels for Prevention: National Survey Findings," Alcohol Health and Research World, in press (1993).

[12] Kaskutas, L. and Greenfield, T. "First Effects of Warning Labels on Alcoholic Beverage Containers, Drug and Alcohol Dependence, 31: 1–14, 1992.

[13] Kaskutas, L. "Changes in Public Attitudes Toward Alcohol Control Polices Since the Warning Label Mandate of 1988," Journal of Public Policy and Marketing, in press, 1993.

a lack of trust of the alcoholic beverage industry by the general population and certainly should not be considered as a reason to forego public policy requiring health and safety messages in alcohol advertisements.

If we are to arm youth with the basic facts about alcohol it will take all our educational might and public policy wisdom. The alcoholic beverage industry, by virtue of its significant resources, seeks to control the content of education and the nature of public policy. Though they are free to exercise their right to use their influence I would urge you to examine closely the message, intended or otherwise, that may be conveyed in their educational material.

The enormous resources of the $92.2[14] billion alcohol beverage industry in America provide it with access and influence to get its message across. If a youth in America receives a message about whether and how to use alcohol it is more likely to come from $2 billion worth of alcohol advertising and promotion designed to sell the product than from the family. If they get a message about prevention it is more likely to come from millions of dollars of industry sponsored, so-called moderation campaigns than it is from professional alcohol or health educators. The problem is that those with a vested interest in promoting the product assume authority, based on their enormous resources, for educating people about the problems associated with the product. However, their message cannot be credible because as a source of the message they are not viewed as trustworthy. A national survey conducted by the Wirthlin Group for the Century Council found only 10 percent of respondents thought the alcohol industry "should be actively involved in working to reduce alcohol abuse and misuse in the United States."[15] The report goes on to say, "While the public clearly views the industry as part of the problem, they just as clearly do not conceive, at this juncture, of the industry as part of the solution."[16]

A recent analysis I contributed to addressed the specific issue of the message in the alcohol industry moderation campaigns. This analysis suggested that these campaigns with vague messages such as "Know When to Say When," "Think When You Drink," and "Drink Safely" may serve more to promote the company's image and products than to prevent alcohol-related problems.[17] They are more public relations efforts than public interest campaigns.

My colleagues and I reviewed 31 moderation ads sponsored by Anheuser-Busch, Miller, and Coors shown through 1991. We found that a pro-drinking message often dominated and good times, good friends, and fast paced lifestyles were associated with drinking. The prevention or health message was overwhelmed by the pro drinking emphasis. In addition, there was a failure to fully separate the activities of drinking and driving. In one spot promoting a designated driver it is unclear whether the designated driver abstains, drinks less that the others, or is just not as intoxicated.

In a separate preliminary research study, this same team used laboratory testing methods to assess how 164 college and 152 high school students responded to alcohol industry moderation advertisements.[18] These students were shown 9 ads sponsored by Anheuser Busch and Coors. Many young people did find some value in the advice offered by these ads but they did, "detect clear commercial and public relations elements in these campaigns, and they are not very impressed by the messages or strongly influenced by the prevention appeals." We found that 38 percent of the young adults thought that the Anheuser-Busch message, "Know when to say when," meant stopping after 4 or more beers. On the other hand, 27 percent thought the Coors "not now" messages meant 4 or more beers was the appropriate amount for the "not now" situations.

We also asked the youth what they thought the two beer companies wanted teens to think about beer drinking. Overall, a majority of the youth thought the message was, "It's OK for teens to drink beer in moderation." Approximately 4 of 10 youth thought the message was, "It's OK for older teens to get drunk on occasion."

At best the youth in this study received a mixed message about moderation and the prevention of alcohol-related problem. This serves as an illustration of the need for public health educators, not alcohol marketers, to develop educational campaigns.

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[14] Jobson's Handbook Advance 1992. A Special Report on Spirits, Wine and Beer Sales and Consumption in 1991 Jobson Beverage Group, New York, New York, 1992.

[15] The Wirthlin Group, (c. 1991) No title, p. 39.

[16] The Wirthlin Group, (c. 1991) No title, p. 5.

[17] DeJong, W., Atkin, C. and Wallack, L. "A Critical Analysis of Beer Industry Sponsored 'Moderation' Advertising," mimeo, 1992.

[18] Atkin, C., DeJong, W. and Wallack, L. The Influence of Responsible Drinking TV Spots and Automobile Commercials on Young Drivers, "1. Audience Responses to Drinking and Driving TV Spots," AAA Foundation for Traffic Safety, Washington, DC, September, 1992.

4. Health and safety messages in alcohol advertisements offer a practical and effective component to addressing alcohol-related problems. The passage and implementation of S. 674 is a meaningful and important step in protecting the children of America. It will give them a fair chance to learn the entire alcohol story and not just the highly selective messages and misleading messages in alcohol advertising.

The public supports health warnings on advertisements because it knows first hand about the influence of advertising on their children and communities better than anyone. Parents will benefit greatly from passage of this legislation because it will provide an easier way for them to initiate discussions with their children about drinking.

The lessons of teachers providing alcohol education in the schools will have increased credibility because of the health and safety messages in advertising.

Communities all across the country which are struggling to prevent alcohol-related problems will be reinforced by the health and safety messages. In fact, this legislation will benefit every individual, group, and organization that is seriously concerned with the prevention of alcohol-related problems.

Parents, teachers, and communities across the country need help to educate children about alcohol. This legislation will be an important part of that help. What can we reasonably expect from the implementation of this bill? Frankly, health and safety messages are not going to top alcohol problems. Health and safety messages, however, are the cornerstone of a comprehensive public policy approach to alcohol problems. These warnings will enhance the effectiveness of other activities and at the same time become more effective because of those activities.

The passage of the Sensible Advertising and Family Education Act of 1993 is good public policy because it:

- will provide basic information about one of our country's most important risk factors;
- will target the entire population and not just heavy drinkers;
- will support other educational and community efforts;
- will encourage more discussion about alcohol problems;
- is supported by the vast majority of Americans; and,
- reflects a scientific base of knowledge gained from our experience with warning labels.

It is good public health policy because it will help to save lives and prevent unnecessary tragedy.

The CHAIRMAN. Very good. Mr. Shiffrin.

STATEMENT OF STEVEN SHIFFRIN, LAW PROFESSOR, CORNELL UNIVERSITY LAW SCHOOL

Mr. SHIFFRIN. Thank you, Mr. Chairman.

My name is Steven Shiffrin. I am a professor of law at Cornell University. I have written extensively on the first amendment. And I very much appreciate the opportunity to testify here today.

The law of required disclosures or warnings in commercial speech cases is generally quite clear: Government has broad latitude to require advertisers to make disclosures they do not want to make. Because first amendment protection for commercial speech is justified principally by the value to consumers of the information provided, the Court concluded in the 1985 *Zauderer* case that an advertiser's constitutionally protected interest in not providing any particular factual information in his advertising is minimal.

Now, to be sure, opponents of this bill speak eloquently about usurping property belonging to somebody else and about the evils of compelled speech. But we all know that private property is not an absolute, and that cries against compelled speech were rejected when the Congress imposed not only required warnings on bottles and cans containing alcoholic beverages, but required warnings on cigarette advertisements.

From a constitutional perspective, this bill is indistinguishable. An advertiser's interest in not providing such information is mini-

mal, and that is true, as I show in my prepared remarks, whether the State interest is to prevent deception or to protect the public health. This is not a close question.

But, as you know, some rather rambunctious opponents of this bill contend that it would produce a chilling effect; indeed, that it could amount to a total ban on broadcast advertising. I submit that if you believe that, you should believe in the Easter Bunny. But, even if it were true, even if amounted to a total ban in broadcast advertising and all other media, this bill would be constitutional.

The key case is *Posadas de Puerto Rico Associates* v. *Tourism Company*. In *Posadas*, a gambling casino in Puerto Rico objected to legislation that prohibited gambling casinos from advertising to Puerto Rican residents but not tourists. Puerto Rico permitted other forms of gambling to its residents, including advertisements for horseracing, cockfighting, and the lottery. It was a genuinely crazy quilt scheme.

Nonetheless, even without legislative findings, let alone scientific studies, the Court upheld the Puerto Rican scheme.

Now, I submit, if the Court would accept Puerto Rico's determination to ban casino gambling advertising even without legislative findings, the Court would accept a considered congressional judgment to proceed with a disclosure bill, whether or not it functioned as a de facto partial or total ban on the broadcast advertising of alcoholic beverages.

Moreover, as I show in my prepared testimony, the Court explicitly says so.

As my prepared testimony further shows, it is wrong to suppose that the recent commercial speech cases, none of which involved the hawking of harmful products, so much as lay a glove on *Posadas*. It is one thing to tell the city of Cincinnati that it cannot categorically ban commercial newsracks from its sidewalks in circumstances where the harm from noncommercial newsracks is equally great or greater. It would be quite another to tell a coordinate branch of Government, the Congress, that it cannot make reasonable efforts to inform or to discourage demand for a product that has a long history of tragic abuse, with severe consequences for the Nation's health and safety, not to mention its economy.

Indeed, despite Justice Blackmun's strong objection, the kind of objection Burt Neuborne, who will be up here in a few minutes, is fond of making, eight Justices in the recent cases reaffirm that nondeceptive commercial speech can be banned if a substantial State interest is furthered in an appropriate way—eight Justices.

Finally, the efforts to distinguish *Posadas* are completely unavailing. Opponents of this bill try to pass it off as Puerto Rican case, as if the first amendment does not apply in Puerto Rico, or the insulting and desperate suggestion was made in hearings last year that the Puerto Ricans were perceived by the Court to be analogous to children. There is no support in the record for that.

Mr. Chairman, distinguished advocates sometimes face cases too formidable to get around. *Posadas* is one such case, and for a good reason. The first amendment protects the dissenters, those who would challenge existing customs, habits and institutions. It protects the citizen critic participating in a democracy. But commercial speech has long been a stepchild in the first amendment family. In-

deed, for most of our history, commercial speech has received no protection whatsoever.

Justice Clark put it well some years ago: "There is no conflict between the Constitution and common sense. Congress has the right to protect the public health."

Thank you, Mr. Chairman.

The CHAIRMAN. Very good, Mr. Shiffrin.

You are familiar with the *Central Hudson* case. In the four prongs on that particular finding, the Supreme Court held that nonmisleading commercial speech for a legal product may be regulated if the Government directly and materially advances a substantial Government interest by means no more extensive than necessary to serve that interest.

Do you believe this bill passes that constitutional muster?

Mr. SHIFFRIN. I think the testimony before you certainly shows that. I mean, you have a very strong public interest—public health—the Court has been willing to recognize aesthetics and conservation as a substantial governmental interest. This certainly promotes the interest of informing the public, including children, about the dangers associated with alcohol. It could, with those warnings, reduce the abuses that are associated with that directly and materially.

Senator Danforth pointed out that alcohol is not inherently a problem, but the Nation has no interest in having mass advertising stimulating demand for it by means of music and concocted magical scenarios, without informing the public about the warnings.

I think Senator Thurmond was right on target when he said: "There is no interest in having that commercial speech without those warnings."

So, I think you have it directly and materially advanced, and I think the means are certainly appropriate.

The CHAIRMAN. But the other side would contend and say, look, we tried to make it illegal for the very reasons that all of you attested to right here. We had Prohibition and we got more public disorder, crime and everything else, health and otherwise. And you have got the Federal Trade Commission charged with false and misleading advertising. And you have not proven any false or misleading advertising before the Federal Trade Commission, so why don't you go and use that particular approach, rather than try to affirmatively require one to advertise against their own legal product?

Mr. SHIFFRIN. I think you make a nice point, but eight Justices of the Court have said you are not confined to showing that it is deceptive. Certainly, the Federal Trade Commission should go after any deceptive or misleading commercial speech. But even if it is not deceptive or misleading, eight Justices of the Court, rightly, I think, recognize that if you are able to promote a substantial State interest by required disclosures, which we have in a variety of circumstances, that would meet constitutional requirements.

Indeed, they have gone so far as to say that you could actually ban all of this advertising. So, I think the constitutional question is really not before you. I think what you need to do is forget the lawyers and forget the special interests. What you need to do is to say: Is this a bill that will help the public health or not?

The Supreme Court is not a barrier, and the first amendment is not a barrier either.

The CHAIRMAN. Dr. Wright, with respect to the particular warning—Drinking increases the risk of high blood pressure, liver disease, and cancer—what evidence do we have that it increases the risk of cancer?

Dr. WRIGHT. Mr. Chairman, there have been numerous long-term studies that have linked the association of alcohol use, particularly with liver disease and subsequent liver cancer. This is the research evidence that this warning is based on. These studies are scientifically sound and have a firm basis.

The CHAIRMAN. Very good. Senator Danforth.

Senator DANFORTH. I have no questions, Mr. Chairman.

The CHAIRMAN. Well, very good.

The committee appreciates the very strong presentation each of you have made here. And we will excuse the panel and leave the record open for many Senators on the floor and at other particular hearings. We want to leave the record open for questions.

Thank you all very, very much.

We will now have the next panel. The next panel here is Mr. Edward O. Fritts, the president and chief executive officer of the National Association of Broadcasters; Mr. Jeffrey Becker, the vice president, alcohol issues, the Beer Institute; Mr. Fred A. Meister, president and chief executive officer, Distilled Spirits Council of the United States; Mr. Robert P. Koch, vice president, federal government relations of the Wine Institute; Dr. Martin P. Block, Integrated Marketing Communications; and Professor Neuborne, New York University School of Law.

Mr. Fritts, if you would move that microphone over closer to you, we would be delighted to hear from you, sir.

And I admonish each of the witnesses again, if you do not mind, please, we are going to include your statements in their entirety. If you will summarize them, we can get around to each one of the witnesses here, because we are trying to get a comprehensive and balanced presentation before the committee on this score. Mr. Fritts.

EDWARD O. FRITTS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL ASSOCIATION OF BROADCASTERS; ACCOMPANIED BY DR. MORRIS CHAFETZ, PRESIDENT, HEALTH EDUCATION FOUNDATION

Mr. FRITTS. Thank you, Mr. Chairman. Let me first express my appreciation not only to you as chairman but also to your panel of fellow committee members for your many courtesies through the years as we have testified before you.

Mr. Chairman, there are two sides to every story. With me today to answer specific questions on medical issues is Dr. Morris Chafitz. He is president of the Health Education Foundation and is the founding director of the National Institute of Alcohol Abuse and Alcoholism, and he has worked in the field of alcohol issues for over 40 years. So, if there are any specific medical questions I hope you would refer those to him.

As broadcasters, Mr. Chairman, we come at the issue of alcohol beverage advertising from an admittedly biased viewpoint. How-

ever, that does not change the facts, and the facts are that this legislation will not solve the problems for which it is intended. In fact, it will create other problems for both our industry and for the public at large.

Our industry has taken a leadership role in fighting alcohol abuse for decades. We are not Johnny-Come-Latelys to this issue. Broadcasters have been involved for years in major public service campaigns on alcohol abuse and drunk driving. We devote large portions of our news and public affairs coverage to alcohol-related issues, and we work with such groups as the Harvard Alcohol Project to put antiabuse themes into prime time entertainment programming.

These activities are part of a larger effort that has shown great success. Drunk driving deaths are down significantly over the past 10 years, and fell again last year. The incidence of traffic deaths due to underage drinking has also been significantly reduced, thanks in part to tougher law enforcement and a uniform drinking age nationwide. Our efforts on such projects as Operation Prom/Graduation have made a significant impact on adolescents' attitude toward alcohol, and our record in helping change societal attitudes in general on alcohol indeed speaks for itself.

In fact, it is through the local broadcast stations that the expression "designated driver" first became a part of the American vocabulary, a concept that saves lives every year. Yet, S. 674 ignores that outstanding record of achievement. It attempts to deal with the problem by placing warnings on beer and wine ads on radio and television, and the passage of this legislation would have two devastating effects.

First of all, beer and wine ads would come off the air. You will hear later from other representatives who would confirm that. There is no justification for them to spend hundreds of millions of dollars in advertising beer or wine if that brand message is lost in the wake of an abrupt warning such as those we saw here earlier today.

If that advertising is lost, broadcasters will lose hundreds of millions of dollars in revenue, and since the ads will not be on the air any more, neither will the warnings be on the air, nor the excellent responsible use spots that each of the major brewers now run at their own expense.

Second, that lost revenue will translate into less public service, less news, and less access to major programs, particularly sports programming. We fear that this will accelerate the movement of major sports programming from free TV to pay cable television. Given what this committee did last year on cable legislation, S. 674 runs completely counter to that effort to ensure access to programming for all viewers.

The loss of service might be justified if the warnings could really solve the alcohol abuse problem in America, but they cannot. There is no scientific research that shows any correlation between advertising and abuse. There is, however, a large body of research showing that warnings in advertising are simply not effective. What is effective is what broadcasters already do—public service campaigns with a single message, news coverage of alcohol abuse issues, and

provocative entertainment programs where antialcohol abuse themes are woven into story lines.

In a survey we conducted this week of NAB member stations, over 98 percent said that they had PSA's on alcohol abuse, drunk driving, or underage drinking during the past year. Nearly 80 percent said that they had done public affairs programs on these topics, and nearly 78 percent presented news segments on alcohol.

We have seen that these activities do work, and that is where we should be focusing our attention. We offer our willingness to work with this committee, and with Senator Thurmond and others, to support alternative approaches that can make a difference, but S. 674 is simply not the solution. Instead, S. 674 ironically will make it more difficult for broadcasters to have the wherewithal to continue their outstanding public service activities which is now underway on the alcohol abuse issue.

While all of us have great emotion on this issue, Mr. Chairman, I would plead for you to look at the facts. The facts require us to reject or significantly modify S. 674 because it is the wrong solution to a serious problem.

Thank you, sir, and I would be happy to answer any questions.

[The prepared statement of Mr. Fritts follows:]

PREPARED STATEMENT OF EDWARD O. FRITTS

Thank you, Mr. Chairman, for the opportunity to testify here today at this hearing. I am Edward O. Fritts, President and CEO of the National Association of Broadcasters (NAB). We represent the owners and operators of the nation's radio and television stations, including the major networks.

I am sure we are all in agreement that alcohol abuse is among this nation's most serious problems. We agree that many people suffer adverse health consequences from the abuse of alcohol. We agree that too many Americans are killed each year on our nation's highways because of drunk drivers, even though those numbers are declining. We share your concern about the many facets of alcohol abuse, including alcohol abuse in our schools, homes and the workplace. Like the members of this panel, broadcasters are involved in their communities. Our children and those of our viewers and listeners face the same temptations and problems that yours do.

Our goals—yours and ours—are the same: reducing the deaths on the highways, eliminating underage drinking, and improving the likelihood that those who become caught up in alcohol abuse seek treatment.

But we do not agree that Senators Thurmond and Simon's bill, S. 674, which would require warnings to be placed on all alcoholic beverage advertisements, will solve any of these problems. There is no scientific evidence which we have seen that links the advertising of beer and wine products to the abuse of those products. Additionally, we have seen evidence that such warnings are not workable, and that in fact, the vast majority of Americans are already aware of the messages which these warnings attempt to convey.

My message to the committee today is simple. To require warnings as a part of broadcast alcohol ads will simply drive those ads off the air without achieving the goal of reducing alcohol abuse in America. Advertising is the only source of revenue that broadcasters have. The ability of broadcasters to provide public service to their communities—including news and public affairs, as well as sports and entertainment programming—will be diminished if this bill becomes law.

ALCOHOL ABUSE—A COMPLEX PROBLEM

As long as there has been alcohol, there have been problems associated with alcohol abuse. That is as true today as it was centuries ago when early civilizations learned how to make wine, beer, and other alcoholic beverages.

Today, approximately two-thirds of adult Americans drink alcohol. The vast preponderance do so legally, without abusing it and with no adverse health consequences. A smaller segment of the population does abuse alcohol, and therein lies the problem which we face. This abuse problem is a serious one, and one which broadcasters are attacking as we speak.

The causes of alcohol abuse are many. There is evidence that genetics may play a part in that susceptibility to abusing alcohol may be determined by one's own genetic makeup. Another key factor which has been isolated in study after study is the behavioral role parents themselves play. It is clear that a family history of alcohol abuse leads the child to repeat the actions of the parent. If parents drink to excess or view alcohol as a solution to problems, their children can grow up with similar views.

For young people, peer pressure clearly plays an enormous part in determining drinking behavior as well. If you are a teenager and others in "your" crowd" are drinking alcohol, you may be at a higher risk of joining their activity.

But the very basis of the legislation we are discussing today ignores these known factors. Instead, it bases its solution on the assumption that advertising of alcoholic beverages can cause people, both young and old, to abuse it. Since that causal relationship is at the very heart of the bill and is discussed in the bill's finding, let us look at that issue more closely.

THE RELATIONSHIP BETWEEN ADVERTISING, CONSUMPTION AND ABUSE

The whole point of S. 674 rests on the assumption that advertising causes abuse. If that were not the case, then there would be no reason to add warning labels to advertising of alcoholic beverages, ostensibly to "counter balance" the supposed encouraging message of the ad to abuse alcohol. The legislation also assumes that in-ad labeling will be effective. However, the research in these areas supports neither assumption.

Three years ago, in his report to Congress on "Alcohol and Health," Secretary of Health and Human Services Dr. Louis Sullivan reiterated that the link between advertising or alcohol portrayals in programming and alcohol consumption cannot be established by any of the research in this area.[1]

That follows similar research in 1985, when the Federal Trade Commission undertook a major study of this exact question at the request of the Center for Science in the Public Interest. The FTC reported that:

> • • • little, if any evidence exists indicating that alcohol advertising or marketing practices deceptively or unfairly result in alcohol abuse or even increased consumption. Absent such evidence, there is no basis for concluding that rules banning or otherwise limiting alcohol advertising would offer significant protection to the public.[2]

If that is true, then why do beer and wine companies spend millions of dollars to advertise? Because even small shifts in the purchasing decisions of Americans who consume alcohol can mean added millions in profits. According to the Beer Institute, the association of major brewers, one percentage point of the beer market in the U.S. is worth $500 million in sales.

One of the findings (#14) in S. 674 asserts that former Surgeon General C. Everett Koop, in his 1988 Workshop on Drunk Driving, recommended that alcohol advertising be matched ad-for-ad with pro-health and pro-safety messages, and that warnings messages be included in all ads. NAB had severe misgivings about the process and procedures used in the developing the Surgeon General's report. Nonetheless, that same report went on to state that "further study" is needed to prove that advertising causes abuse. Unfortunately, this legislation jumps to the supposed solution without any investigation into its need or efficacy.

In fact, several of the bill's findings are based on public opinion, rather than scientific fact. In your deliberations on this bill, we would caution against using public opinion polls as a substitute for scientific research and knowledge. Only Congress can balance a draconian non-solution such as S. 674 against the public service activities and the potential loss of programming services if the measure ever passes.

Even if the rationale behind the legislation were correct, and advertising did cause an increase in alcohol abuse, one would assume that increased advertising would necessarily mean increased consumption. But that is not the case, either. Between 1980 and 1988 for example per capita consumption of beer actually declined 2.5 percent. Yet during that same period of time, the amount of beer advertising increased.[3] Why would brewers and vintners spend more on advertising if they were not seeing an increase in overall consumption? Again, the answer is increased market share. With less consumption by American drinkers, increasing one's share of

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[1] "Seventh Special Report to the U.S Congress on Alcohol and Health," U.S. Department of Health and Human Services, January 1990 at 364.

[2] Federal Trade Commission press release, April 16, 1985 at 1.

[3] According to Broadcast Advertiser Reports, $398 million was spent on beer and wine television advertising in 1980. By 1988, that figure was $762 million.

the market by "wooing" your competitors' customers becomes all the more important.

Another important point relates to young people and the supposed impact of alcohol advertising on them. In order to make a judgment about that issue, one must first look to see if alcohol advertising is placed on broadcast programs which young people are even likely to watch. Given that a high percentage of alcohol advertising is placed in sports programming, that answer appears to be no.

Statistics from 1992 network television viewing indicate that viewers aged 2-18 represent the smallest percentage of the audience for such sports as baseball, pro and college football, NBA basketball, and the Olympics. In fact, the viewership for young people ranges from a low of 11.9 percent for the Winter Olympics to 18.9 percent for NBA basketball.[4]

In addition, it is clear that beer companies in particular are staying away from programming where there is significant viewing by those under 21. Statistics for 1992 show that over 90 percent of beer advertising was carried within sports programming, with another 8.5 percent seen on prime time and late night programs. Less than one percent of TV beer ads run within news programs or early morning shows.[5]

Further, what about the huge illegal drug problem which the United States faces? How does one explain the interest that some young people have in crack, marijuana, PCP or other illicit drugs, when none of these substances is advertised in any way? In the face of this evidence, to suggest that somehow placing warnings in alcohol ads will limit or reduce the number of abusers is totally unrealistic.

Some here today would even argue that we should ban advertising altogether as a way to combat alcoholism. Would that work? Well, let us look at the record on tobacco. A 1986 study of sixteen countries which banned tobacco advertising suggests that the incidence of smoking was not affected.[6]

What about the impact of warnings within ads? What does the research there tell us? One study conducted on the use of warning labels on ads for smokeless tobacco raises serious questions about the efficacy of such warnings. In that study, the authors conclude:

> * * * in-advertising disclosures for smokeless tobacco are not particularly effective at communicating health warnings. If that finding is confirmed by other researchers, it would suggest the need for serious re-consideration of the role of in-advertising disclosures in general. * * * A disclosure that doesn't communicate provides little information to consumers.[7]

Another key issue is whether or not the public is aware of the dangers of alcohol abuse as suggested by the required warnings that would be rotated on advertising.

According to research by the Roper Organization, the Department of Health and Human Services, and the National Institute of Alcohol Abuse and Alcoholism, between 95 and 100 percent of Americans are already aware of the information contained in most of the warnings.

To summarize, those who support an advertising warning bill bear the very heavy burden of proving the underlying assertion that such advertising causes abuse, and that warnings within ads will address the problem of alcohol abuse. For all the reasons just detailed, however, such causal relationships have not been established.

Why people abuse alcohol is a complicated question that does not lend itself to easy answers. Restrictions on advertising will do little or nothing to help us fight the causes or find solutions for alcohol abuse.

WARNINGS IN ADVERTISING WILL MEAN THE END OF SUCH ADVERTISING

Throughout the discussion of placing warnings in ads, we have heard that this legislation is not a "ban." Yet, ironically, a de facto ban will be the end result if this bill passes in its current form.

It is clear from statements made by alcohol manufacturers and from our experience with tobacco advertising that if warnings are required on broadcast ads, advertisers will stop using the broadcast media. In fact, at the 1991 NAB Convention in Las Vegas, Michael Roarty, Executive Vice President for Corporate Marketing and

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[4] Nielsen Television Index, Special Release, 4th Quarter 1992. Nielsen data supplied by the Television Bureau of Advertising.

[5] Nielsen Monitor-Plus, October-December 1992. Nielsen data supplied by the Television Bureau of Advertising.

[6] Boddewyn, Professor J.J., "Tobacco Advertising Bans and Consumption in 16 Countries," International Advertising Association, 1986 at 6.

[7] Popper, Edward T. and Murray, Keith B., "Communication Effectiveness and Format Effects on In-Ad Disclosure of Health Warnings," Journal of Public Policy and Marketing. Ann Arbor, MI, Volume 8, 1989 at 122.

Communications at Anheuser-Busch Companies, Inc., told our All-Industry luncheon: "Such legislation would, in our opinion, impose an ad ban on beer advertising."

The placement of a warning message on 30 and 15-second commercials dilutes the overall sales message to such an extent that advertisers will not pursue such advertising. Why should they? With the exception of print tobacco ads which carry warnings, no other products sold have mandated warning labels regarding their use required in advertising. It is extremely unrealistic to expect that a beer or wine manufacturer who is selling a legal product used in moderation by the vast majority of drinking Americans will want to dilute millions of dollars of advertising by including health warnings aimed at a minority of alcohol abusers.

In fact, alcohol manufacturers recognize that these kinds of moderation messages work best when they are the total focus of advertising. That is why such projects as Anheuser-Busch's "Know When to Say When" campaign and other activities by other brewers have been created. A 30 or 60-second treatment of the subject of moderation or not-drinking-and-driving can be very effective in reaching the audience with a health-related message. Brief warnings thrown onto the end of commercials designed to promote brand names will not be effective. Broadcast product advertising is simply not an effective vehicle for including educational messages, contrary to the assertion of the bill's supporters.

By its very nature, broadcast advertising is limited due to time constraints. It does not have the luxury of print advertising, where readers have the opportunity to read an ad over, digest and comprehend it. The fleeting nature of messages on radio and TV ads are not suited for anything other than a single message. Such selling messages are very carefully constructed to be simple and not to overload the listener with too much information.

The addition of a health warning in such ads will only confuse the audience, and will end up rendering both the product message and the health warning ineffective.

In short, the bottom line is that if this legislation passes, there will be no more beer and wine ads on radio and TV. For some whose real agenda is the elimination of such ads, that may seem like a laudable accomplishment. But what would the end of such ads mean? Well, for starters, if you accept the view of proponents of this legislation that the warnings "balance" the original message or educate the consumer, that goal becomes impossible if the ads stop running. The goal of the bill and its end result are at cross-purposes.

For those who abuse alcohol, the loss of such advertising would have no impact. As we have stated, since there is no correlation between advertising and abuse, abusers will remain unaffected by the diminution or elimination of ads. Similarly, they would not be persuaded by a brief warning in an ad to cease their abuse. Young people would still decide whether or not to drink illegally based on their friends and classmates and their parents' attitudes.

For those who produce these products, the end of broadcast advertising will simply mean that they will market their product some other way or expand their operations. Beer will still be brewed and wine will still be made and sold.

But for broadcasters and the public, the impact will be seen in a number of negative ways. Since we have only one source of revenue—advertising—broadcasters face losing over $660 million dollars in annual revenue from beer and wine advertising. That revenue is some of what allows stations to provide local news create and produce local programming, and to purchase the ever-increasingly expensive rights to sports and other entertainment programming. It is clear that all of these functions of broadcasters—news, public affairs and entertainment—will suffer from lost revenue.

Thus, the passage of this bill can only dilute the ability of broadcast licensees to meet the public interest obligations which the FCC has placed upon them—without any proof that such a policy toward advertising will solve any of the problems related to alcohol abuse in America.

I mention sports programming in particular as one example of programming that would be immediately endangered by such legislation. Beer companies in particular are strong advertisers on sports programs, both radio and TV. Given the huge losses of revenue, it is not inconceivable that broadcasters could lose the rights to show such sporting events to cable, which has multiple revenue streams. We believe that one legacy of S. 674 would be to speed up the movement of sports from free TV to pay cable and pay-per-view. Such a trend can only limit the access to this kind of programming for millions of Americans, and could cost them millions of dollars more in order to watch such programs.

While there is no causal relationship between advertising and abuse, I can say with total certainty that there is a real relationship between the loss of advertising and the ability of broadcasters to provide programs to their audience. With reduced

revenues, broadcasters face a reduced ability to program their stations in an effort to serve their local communities.

S. 674 RAISES SERIOUS CONSTITUTIONAL CONCERNS

In addition to the problems I have already discussed, I want to raise another concern. We believe this legislation is unconstitutional.

The Supreme Court has ruled on numerous occasions that truthful commercial advertising is entitled to substantial First Amendment protection. Given that there is no allegation that current beer and wine advertisements on radio and TV are "false and misleading," there is no basis for contending that the government must impose warnings onto such advertising.

A complete constitutional review of this legislation is included in an attachment to this testimony. It was prepared for NAB by P. Cameron DeVore of Davis Wright Tremaine, in Seattle, Washington, who is one of the nation's most distinguished First Amendment attorneys.

BROADCASTERS FIGHTING ALCOHOL ABUSE—AN OUTSTANDING RECORD

The broadcast industry has a role to play in helping fight alcohol abuse, and that is to assist in educating the audience about alcohol. We do this through public service announcements (PSAs), in our newscasts, and within the story line of entertainment programs.

Broadcasters are not newcomers to the alcohol issue. Many years ago, we began the effort to inform the public about the dangers of drinking and driving, a national problem that was killing as many as 30,000 Americans each year.

Ten years ago, for example, NAB created "Operation Prom/Graduation," a project to dissuade students from using alcohol on prom and graduation nights. This program has been picked up by schools, churches and stations from coast to coast. It has been hailed as one of the most successful projects of its kind, spawning such things as alcohol-free proms and graduation parties, school organizations that fight alcohol abuse and drunk driving, and a nationwide awareness of the problem.

NAB is also working closely with major sports leagues and the U.S. Department of Transportation in the TEAM coalition, which stands for "Techniques for Effective Alcohol Management." This joint effort discourages alcohol abuse at stadiums and sports arenas, and includes such activities as limits on the sale of alcohol at one time to one person, designated driver programs and server training. By uniting these various segments along with a publicity campaign, our goal is to reduce alcohol abuse on a number of fronts. A study by the National Highway Traffic Safety Administration in June of 1991 concluded that the TEAM program is effective in reducing alcohol-related incidents at sporting events and by drivers heading home from such events.[8]

NAB also has held a series of thorough briefings for broadcasters in various cities across the nation, similar to those we already conduct on MDS, to educate broadcasters further about efforts to attack alcohol abuse issues, including such issues as fetal alcohol syndrome. So far, five briefings have been held in states across the nation involving statewide and local perspectives on the problem. These briefings help establish a dialogue between public health officials, community and government leaders and local broadcasters on the overall issue of alcohol abuse.

We have embarked on two new projects to deal with the issue of underage drinking. "It's Not For Kids" is an industry-wide effort targeted at elementary school children and their parents, designed to address the problem before it begins. "Underage Drinking" is another campaign focused on helping stations assess the problem in their local communities and ways in which that problem can be addressed.

These activities come on top of such NAB campaigns as Safe Boating, Project Workplace (begun in 1984 as one of the first-ever campaigns to address alcohol abuse on the job), and our public service campaigns aimed at specific holiday periods (Christmas/New Years, Fourth of July, etc.).

We have taken these campaigns and others to our member stations, and they have responded enthusiastically. Another program of note is our joint effort with the Congressional Families for a Drug-Free Youth and the Congressional Club. This biannual project records public service announcements using congressional spouses or teenage children, with alcohol abuse always one of the topics. These spots are then fed by satellite to stations in the lawmaker's home state. We are, in fact, taping such spots even as this hearing is being held. This project continues our longstand-

[8] "Responsible Alcohol Service Programs Evaluation Summary Report," U.S. Department of Transportation, June, 1991 at 27.

ing commitment to fight alcohol abuse and to make the misuse of alcohol socially unacceptable.

We have also been working for many years with the Advertising Council, founded jointly by NAB and the advertising industry. The Ad Council has one program jointly sponsored by the National Council on Alcoholism and Drug Dependency which has been running since 1986. This project works to prevent youth alcoholism and to reach parents of teen alcoholics. In addition, the Ad Council continues its efforts with the National Highway Traffic Safety Administration on anti-drunk driving messages, which has been ongoing since 1983. In all cases, NAB helps distribute the Ad Council PSAs via satellite to all TV stations across the nation.

Not only is the NAB hard at work on this problem, but the individual state broadcaster associations are also doing their part. One notable example is the Washington State Association of Broadcasters Alcohol Task Force.

This group is made up not only of broadcasters, but also community leaders in youth alcohol issues, and state leaders as well. The focus is on underage drinking, and the group is responsible for creating more than a dozen different TV and radio PSAs over the past three-and-a-half years. The group also provides background and research on how others can use broadcasting to reach the public on this issue. Focus group testing was used to create the messages, and follow-up testing shows that the information has very high recall with young people. This effort has now been added to school curriculum in the state.

These and other efforts on the part of broadcasters are successful, in part, because of the cooperative working arrangement local radio and TV stations have forged with local and state police, civic and fraternal organizations, other business interests, local religious institutions and groups such as the local PTA.

In addition, at our 1993 NAB Board of Directors meeting, we reaffirmed broadcasters' "Statement of Principles." This statement includes a specific reference to avoid the glamorization of substance abuse in any programming, and reinforces the need to show the adverse consequences of substance abuse within programming.

But beyond the work NAB has done, individual stations and the major networks themselves have helped lead the way for years in this fight. In a survey NAB conducted of its membership in 1991, we found that of all public service campaigns which radio and TV stations run, 41 percent of radio stations and 62 percent of TV stations cited substance abuse as among their three biggest public service efforts.[9] Alcohol abuse and drunk driving are also major issues for news coverage on virtually every radio and TV station in the nation.

And in a random sample survey we conducted this week of NAB member stations, over 98 percent aired PSAs during the last year on alcohol abuse, drunk driving or underage drinking. Nearly 80 percent had done public affairs programs on these topics, and over 77 percent had aired news segments on alcohol topics.

As for network programming, the work done by such groups as the Harvard Alcohol Project (HAP), which encourages program producers to work anti-alcohol abuse messages into program story lines, has paid off.[10] In addition, HAP has undertaken a joint communications program to curb teenage alcoholism by joining forces with the Advertising Council. NAB is providing national distribution of all materials generated through this program. The Harvard effort reinforces another program jointly sponsored by the Ad Council, the National Citizens Commission on Alcoholism (NCCA), and the National Commission on Alcoholism and Drug Dependence (NCADD), which is designed to encourage friends, family and others to contact the NCADD for counseling and assistance when a teenager they know is suspected of having serious difficulties with alcohol.

Currently, the TV networks, NAB and HAP have joined forces to produce and distribute public service announcements featuring President Clinton. The spots, designed for air during the summer months, focus on drunk driving prevention and underage drinking.

We have attached to this written testimony just a few examples of the kind of activities NAB and the broadcast industry are undertaking to fight alcohol abuse.

All of this work is designed to present coherent, understandable messages which the audience can use to educate itself about alcohol abuse topics. The question this subcommittee must ask itself is: in light of all these efforts, would a warning in beer and wine advertising accomplish as much? We see no evidence to support such a conclusion.

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[9] "In the Public Interest: A Survey of Broadcasters' Public Service Activities," NAB, May 1991 at 11.

[10] According to the Center for Health Communication, Harvard School of Public Health, over the past four television seasons more than 150 television episodes have incorporated dialogue consonant with drunk driving prevention, including frequent references to designated drivers.

HAVE VOLUNTARY EFFORTS BY BROADCASTERS HELPED

In one specific area of concern—drunk driving—we believe the record does suggest success. Broadcasters' efforts have taken place against a backdrop of tougher law enforcement and new laws raising the drinking age to 21 nationwide. All these factors have led to a noticeable drop in the number of alcohol-related traffic fatalities in the past several years particularly among young people.[11] This is concrete evidence that public service campaigns—in conjunction with other activities—can be effective in reaching the public and helping change societal attitudes about what is and is not acceptable behavior.

Drunk driving is no longer considered an innocent act, but is treated harshly and actively prosecuted. When broadcasters help spread that message through news stories entertainment programs and through separate coherent public service messages, we have seen positive results.

This kind of overall approach—voluntary public service campaigns that include PSAs, community outreach, and coordination with concerned organizations—is being used on other aspects of the alcohol abuse problem as well. We believe this kind of effort will continue to yield similar results.

SOLUTION IS CHANGING SOCIETAL ATTITUDES

We believe that as alcohol abuse has become less and less acceptable, the problems of drunk driving and other forms of abuse have been affected in a positive way. Schools now work to increase their educational efforts on substance abuse, including alcohol. Doctors warn pregnant women about the avoidance of alcohol during their pregnancy. Citizens groups are involved in nearly every community in America, bringing together people from all walks of life to fight alcohol abuse of all kinds.

NAB and the broadcast industry have been and will continue to be leaders in this fight. Broadcasters are developing new programs every day to combat abuse and to educate the public.

What is also clear, however, is that the addition of warnings to radio and TV ads will not accomplish the benefits the sponsors of this legislation seek. The alcohol industry has stated emphatically that if this legislation becomes law, they will cease using broadcast advertising. That will mean that the public will no longer hear the moderation and "responsible drinking" spots—because those spots will no longer run. But the public also will not see or hear any warnings—because the spots in which the warnings would appear will not be aired. In addition, the lost revenue to broadcasters will translate into fewer resources to serve local communities and will accelerate the movement of sports programs to pay-per-view cable. I see no benefit to anyone from this scenario.

This legislation will not address the root causes of alcohol abuse nor reduce the level of abuse. Instead, it will drain away our ability to provide local communities with quality news, public affairs and entertainment programming. As such, we must urge this committee to reject S. 674, and instead to put your emphasis on continuing to support the efforts already underway that have shown great success in recent years.

We understand that this is an emotional issue, particularly for Senator Thurmond. We extend our condolences to him on the recent tragic loss of his daughter.

But let us not allow emotions to override the facts. We need to fight alcohol abuse using thoughtful and multi-faceted approaches that attack the root of the problem. Simplistic legislation, such as S. 674, that bases its entire premise on the totally unproven assumption that advertising causes abuse is not helpful, and will not solve the alcohol abuse problem. Instead, it will create additional problems for both broadcasters and the public.

I appreciate the opportunity to appear before your committee today, and would be pleased to answer any questions.

NAB ALCOHOL ABUSE PREVENTION PROJECTS—MAY, 1993

• *Congressional Families PSA Project.* 1993 project currently underway. Since 1985, hundreds of congressional spouses and their families have produced PSA's for

[11] Alcohol-related auto deaths among 15-to-20 year-olds fell to 3,552 in 1990 from 5,380 in 1982, according to statistics compiled by the National Highway Traffic Safety Administration. In addition, drunk driving deaths overall have fallen from 57.2 percent of all traffic fatalities in 1982 to 50 percent in 1990, 48 percent in 1991 and 45.8 percent in 1992, saving thousands of lives.

kids on topics of alcohol and drug abuse. NAB coordinates on-air use by local radio and TV stations.

• *Alcohol Abuse Briefings.* The purpose of these local meetings is to educate broadcasters and others in the community about new efforts to attack alcohol abuse. Project began two years ago.

• *MADD/NAB National Youth Conference.* 500 teens from across the country participated in each of our Washington conferences with MADD to discuss the problem of alcohol abuse and impaired driving. Spurred interaction between government officials, kids and media.

• *Harvard Alcohol Project.* Includes designated driver and, now, teen alcohol messages in prime time storylines. More than 110 primetime TV episodes have dealt with the issue of alcohol abuse due to this effort. NAB and Harvard have produced and distributed drunk driving PSAs featuring President Clinton nationwide.

• *Kidsummit Against Drugs.* Project developed by NAB to educate elementary school kids about the dangers of alcohol and drug abuse/use. Used in hundreds of local schools.

• *TEAM Coalition* (Techniques for Effective Alcohol Management). NAB is a member of the TEAM coalition which includes major league sports and works to eliminate alcohol abuse at sporting arenas.

• *Celebration Prom/Graduation.* Developed by NAB 10 years ago. Most effective and successful national campaign to discourage alcohol use by teens. implemented in every community nationwide.

• *Project Workplace.* Begun in 1984, the first campaign of its kind that addresses alcohol and substance abuse in the workplace.

• *Boating Safety.* A new approach to addressing alcohol abuse, particularly during the summer months. President Clinton has taped PSAs to augment this effort.

• *Holiday Season Activities.* Wide variety of alcohol abuse prevention projects between Thanksgiving and New Years * * * MADD's Project Red Ribbon, designated driver programs, emphasis on server training.

• *TIPS Server Training Program.* A new technique for addressing alcohol abuse in restaurants, workplaces, and at home. An action approach to the problem. Mass media component is being developed.

• *Safety Belts.* Every broadcast station in the country has received materials promoting DOT's safety belt campaign and encouraging local station involvement.

• *MADD Board.* NAB serves on the National Board of MothersAgainst Drunk Driving and chairs MADD's Communications Committee.

• *Drunk Driving Simulator.* Part of the "Think! Don't Drive and Drink" campaign which began with DOT, NAB, MADD, Dodge and the Ad Council. Broadcasters provide live coverage of the simulator's travels to high schools across the country.

• *Children & Alcohol.* "It's Not for Kids" is a new NAB project targetted to elementary school children and their parents. Designed to address the problem before it begins.

• *Underage Drinking.* A new NAB campaign to assist stations in addressing the difficult issue of underage drinking in local communities.

STATEMENT OF P. CAMERON DEVORE ON BEHALF OF NATIONAL ASSOCIATION OF BROADCASTERS BEFORE THE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION CONCERNING S. 674

I am P. Cameron DeVore of Davis Wright Tremaine. I am serving as First Amendment counsel to the National Association of Broadcasters in this matter. As you know, NAB is a nonprofit association serving and representing radio and television stations and networks. It seeks to preserve and enhance its members' ability to freely disseminate information, including advertising and other commercial information. It also has a long-standing role in informing Congress on the First Amendment limitations on government regulation of speech.

At the Consumer Subcommittee's hearing on S. 664, the "Alcoholic Beverage Advertising Act," on April 2, 1992, powerful testimony was presented concerning the highly dubious constitutionality of a governmental mandate that all advertising for alcoholic beverages must include special warnings about the dangers of alcoholic abuse. Now, S. 674, the "Sensible Advertising and Family Education Act," raises the same fundamental First Amendment question: whether government has power to require truthful advertisers of a lawful product to act as government spokesmen, repeating mandated warnings about the dangers of abusive use of that product.

If there was any doubt last year that such a congressional mandate would not pass muster under the First Amendment, the U.S. Supreme Court has removed it in 1993. In decisions on March 24 and April 26, the Court reaffirmed and strength-

ened First Amendment protection of purely commercial advertising, affirmed the unconstitutionality of well-intentioned but overly-intrusive governmental restrictions on advertising, and raised the already-heavy burden placed on government to justify any restrictions on truthful advertising.

The cases are *City of Cincinnati* v. *Discovery Network*, a 6-3 decision written by Justice Stevens, and *Edenfield* v. *Fane*, an 8-1 decision by Justice Kennedy. As discussed below, these decisions completely undercut previous assertions to this Committee that commercial speech protection had been eviscerated by the Court in *Posadas* v. *Tourism Company of Puerto Rico* (1986). It is now clear that *Posadas* has little remaining relevance to these issues, and that the *Central Hudson* First Amendment test of advertising regulations has been enhanced significantly.

The Supreme Court has ruled on numerous occasions that truthful commercial advertising is entitled to substantial First Amendment protection. Under the 1993 cases, any government regulation of commercial speech must be "narrowly tailored" and must materially advance a genuine public interest. Congress is now required to exhaust "numerous and obvious less burdensome alternatives" before restricting advertising. (*Discovery Network*) It is clear that it is "up to the speaker and the audience, not the government, [to] assess the value of [advertising] information." (*Edenfield*)

Under the new cases, a compelled recital of rotating warning messages containing shorthand information already well-known in our society cannot satisfy the *Central Hudson* test. This conclusion is reinforced because S. 674 is not simply a disclosure requirement, but in effect would impose a government-compelled label of disapproval of alcoholic beverages, an otherwise fully legal product.

The Court in *Discovery Network* eloquently expressed the need to define the concept of commercial speech narrowly to "ensure that speech deserving greater constitutional protection is not inadvertently suppressed." One of the basic guarantees of the First Amendment is freedom from government compulsion to speak. S. 674 is a paradigm example of governmentally-compelled speech. In the area of political speech, this protection has been expressed by the Court in absolute terms. In the leading case, *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1943), Justice Jackson, writing for the Court, struck down West Virginia's compulsory flag salute statute. As a matter of First Amendment principle, the Court stated that "involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence. " Id. at 633. *Barnette* has been followed in numerous cases.

The Supreme Court has countenanced only one significant exception to the prohibition on government-mandated speech, even as applied to commercial speech. When advertising would otherwise be false or misleading—when material omitted from an advertisement is necessary to be added in order to prevent the consumer from being misled—further disclosure may be required. *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626 (1985), upheld the requirement that a lawyer's advertisement disclose that his contingent fee clients might be liable for court costs, even if the lawsuit were unsuccessful. The Court justified the ban on the narrow grounds that, otherwise, the advertisement would be misleading.

That narrow exception provides no support for the mandatory warnings proposed in S. 674. It cannot be seriously argued that all alcoholic beverage advertising is false, per se, or misleading merely because it does not contain the compelled warnings. Groups strenuously opposing alcoholic beverages as a product have occasionally argued that advertisements showing that alcoholic beverages are enjoyable are misleading because they do not point out that alcohol is capable of abuse. Such a standard—the only one that can be propounded to justify S. 674—would give government an unfettered role to mandate expression of its view of product hazards and require other information which it deems useful concerning products or services. Such a concept would support a requirement that advertisers of any product subject to misuse or abuse must list the risks in their advertising copy. For example, this extraordinary rationale would support legislation requiring meat or dairy product ads to disclose the cholesterol risks of heart disease, and automobile manufacturers to disclose that speed can kill and that non-use of seat belts exponentially increases the risk of injury. The First Amendment stands as a complete barrier to this concept, and thus to the mandatory requirements of S. 674. Our detailed legal analysis follows.

I. COMPELLED SPEECH IS DISFAVORED UNDER THE FIRST AMENDMENT

The First Amendment provides that "Congress shall make no law abridging freedom of speech or of the press." U.S. Const. amend. I. The Supreme Court has interpreted the freedom of speech as "necessarily comprising the decision of both what

to say and what not to say." *Riley* v. *National Federation of the Blind*, 487 U.S. 781, 797 (1988) (emphasis in original); accord *Wooley* v. *Maynard*, 430 U.S. 705, 714 (1977) (freedom of speech includes "both the right to speak freely and the right to refrain from speaking at all"). "Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech," and the Court therefore considers such compulsion "as a content-based regulation of speech." *Riley*, 487 U.S. at 795.

The Court repeatedly has struck down governmental attempts to modify a speaker's message by dictating that the speaker must also sponsor a competing message. E.g., *Riley*, 487 U.S. at 795-801 (striking down regulation requiring solicitors of charitable donations to disclose amount of funds actually turned over to a charity); *Pacific Gas & Electric Co.* v. *Public Utilities Comm'n*, 475 U.S. 1, 20-21 (1986) (Commission order requiring utility to include in its billing memos speech of a public interest group with which it disagreed "impermissibly burdens [the utility's] First Amendment rights because it forces [the utility] to associate with the views of other speakers, and because it selects the other speakers on the basis of their viewpoints").

No legislation similar to S. 674 has been presented to the Supreme Court for its evaluation under the First Amendment. The Court, however, has reviewed issues concerning the constitutionality of forced commercial speech. As with other commercial speech regulations, the Court assesses the validity of compelled commercial speech under the four-part test in *Central Hudson Gas & Electric Corp.* v. *Public Serv. Comm'n*, 447 U.S. 557, 566 (1980) (commercial speech that (1) concerns lawful activity and is not misleading (2) may be regulated to further a substantial interest asserted by the government, (3) but only by regulations that directly advance the asserted governmental interest and (4) are no more extensive than is necessary to serve that interest).

Previous cases addressing forced commercial speech have not proceeded beyond the first two prongs of the *Central Hudson* test. In the leading Supreme Court decision, *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626 (1985), the Court upheld a state requirement that attorneys' advertisements offering contingent-fee arrangements must include a statement that clients will be liable for significant litigation costs even if their lawsuits are unsuccessful. The Court agreed with the state that such an advertisement without the clarifying information would be misleading. See also *American Home Prods.* v. *Federal Trade Comm'n*, 695 F.2d 681 (3d Cir. 1983) (upholding FTC cease and desist order requiring plaintiff to make disclosures limiting its deceptive affirmative advertising claims).

The alcoholic beverage advertisements targeted in S. 674 concern a lawful activity and are not deceptive or misleading. Accordingly, none of the prior case law upholding disclosure requirements is applicable to the proposed legislation. Rather, the validity of S. 674 must be assessed under the remaining two prongs of the *Central Hudson* test: imposition of the warning requirements must directly advance Congress' stated governmental interest and must be no more extensive than is necessary to serve that interest. The proposed legislation cannot satisfy these requirements.

II. THE PROPOSED WARNINGS DO NOT DIRECTLY ADVANCE THE STATED GOVERNMENTAL INTEREST

The government will be required to carry the burden of justifying the speech restrictions in S. 674. "This burden is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield* v. *Fane*, No. 91-1594, slip op. at 9 (U.S. Sup. Ct. April 26, 1993); see *Central Hudson*, 447 U.S. at 564 ("the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose"). The warning requirements in S. 674 will not directly advance the legislation's asserted interest or alleviate the harms that are recited in the proposed Congressional findings.

In those proposed findings, S. 674 recites a litany of problems that result from the abuse of alcohol. Only proposed findings (10) through (16), however, address any relationship between these problems and advertising of alcoholic beverages, and none of these findings provide anything more than speculation and conjecture. Finding (10), for example, concludes that "Alcohol advertising, especially in the broadcast media, represents the single greatest source of alcohol education for persons in the United States." The only support for this blanket statement is a 1990 study of 10- to 13-year olds purportedly finding "a relationship" between advertising and "expectations that the individual [sic] drink as an adult." Nothing is cited from the study

to support that broadcast advertising is "the single greatest source of alcohol education," the "relationship" is not specified, and the study says nothing about any correlation between advertising and alcohol abuse.[1]

On the other hand, multiple studies available to the Committee, conducted as recently as 1991, provide specific data negating any connection between alcohol advertising and alcohol abuse. Among those studies is a 1985 survey of scientific literature conducted by the Federal Trade Commission, which is responsible for policing deceptive advertising, in which the agency found "no reliable basis to conclude that alcohol advertising significantly affects consumption, let alone abuse."

A similar situation was presented to the Court in *Edenfield* v. *Fane*, in which the state of Florida sought to ban solicitation by certified public accountants. The Court found that the state failed to cite any studies or evidence suggesting that CPA solicitation would result in the feared fraud, overreaching, and compromised independence used to justify the ban. Rather, the Court found that significant studies and evidence contradicted the state's fears. The Court accordingly held the ban unconstitutional, concluding, "The State has identified certain interests in regulating solicitation in the accounting profession that are important and within its legitimate power, but the prohibitions here do not serve these purposes in a direct and material manner." Slip op. at 11-12.

The studies and agency recommendations cited in the proposed legislation do not support a connection between alcohol advertising and alcohol abuse. Numerous studies, on the other hand, strongly support the lack of any such connection. Under these circumstances, the mandated warnings in S. 674 do not serve the proposed legislation's legitimate concern for the problems of alcohol abuse in a direct and material manner.

III. THE PROPOSED WARNINGS ARE MORE EXTENSIVE THAN IS NECESSARY TO SERVE THE ASSERTED GOVERNMENTAL INTEREST

Even if the proposed warnings in S. 674 directly advanced the asserted governmental interest, those warnings are more extensive than is necessary to serve that interest. Pursuant to the fourth prong of the *Central Hudson* test, the Supreme Court "'require(s) the government goal to be substantial, and the cost to be carefully calculated. Moreover, since the State bears the burden of justifying its restrictions, it must affirmatively establish the reasonable fit we require.'" *City of Cincinnati* v. *Discovery Network, Inc.*, No. 91-1200, slip op. at 6 n.12 (U.S. Sup. Ct. March 24, 1993) (quoting *Board of Trustees* v. *Fox*, 492 U.S. 469, 480 (1989)). The government thus will have "to establish a 'reasonable fit' between its legitimate interests [in curbing alcohol abuse] and its choice of [mandated warnings] as the means chosen to serve those interests." Id. at 6. A "reasonable fit" is "one whose scope is 'in proportion to the interest served' that employs not necessarily the least restrictive means but * * * a means narrowly tailored to achieve the desired objective." *Fox*, 492 U.S. at 480 (quoting in re *R.M.J.*, 455 U.S. 191, 203 (1982)) (citation omitted).

The enormous costs and negligible benefit of implementing S. 674 preclude any "reasonable fit" between curbing alcohol abuse and the proposed warnings. As the Supreme Court recognized in *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. ——, 119 L. Ed. 2d 157 (1992), extensive disclosure requirements severely burdened a speaker's ability to communicate its message. At issue in *Morales* were detailed disclosure requirements for airline fare advertisements. The Court did not assess the constitutionality of those requirements, concluding that they were preempted by the Airline Deregulation Act, but the Court found,

> sections requiring "clear and conspicuous disclosure" of each restriction make it impossible to take out small or short ads, as does (to a lesser extent) the provision requiring itemization of both the one-way and round-trip fares. * * * As the FTC observed, "[r]equiring too much information in advertisements can have the paradoxical effect of stifling the information that customers receive." * * * All in all, the obligations imposed by the guidelines would have a significant impact upon the airlines' ability to market their product * * * 119 L. Ed. 2d at 171.

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[1] Similarly, finding (11) cites a 1981 study allegedly finding a "significant relationship" between advertising and "drinking behaviors and attitudes of the individuals that can lead to *certain forms* of problem drinking," none of which are specified. (Emphasis added). The remaining findings provide even flimsier empirical support for the proposed warnings: findings (12) and (16) are merely public opinion polls; finding (13) approximates the amount the industry spends on alcohol advertising; and findings (14) and (15) refer to government agency recommendations for mandating warnings with no explanation as to why those agencies made such recommendations.

Similarly, the mandated warnings in S. 674 would "take" up to 10 seconds of air time to broadcast, which represents 33 percent of a standard 30-second advertisement and 75 percent of a 15-second spot. No advertiser could afford to pay for television or radio time when one-third to three-fourths of that time must be devoted to a government-imposed message disapproving of the advertiser's product. Mandating such warnings would "make it impossible to take out small or short ads" and accordingly would effectively ban alcoholic beverage advertisers from radio and television.

The Court recently refused to uphold a commercial speech restriction under even less egregious circumstances. In *Discovery Network* the city of Cincinnati used a previously enacted ordinance to ban freestanding newsracks for magazines consisting primarily of advertisements as a means of improving the safety and appearance of city streets. The Court concluded that the benefits of banning the few targeted newsracks failed to outweigh the costs to the affected vendors:

> The fact that the city failed to address its recently developed concern about newsracks by regulating their size, shape, appearance, or number indicates that it has not "carefully calculated" the costs and benefits associated with the burden on speech imposed by its prohibition. The benefit to be derived from the removal of 62 newsracks while about 1,500-2,000 remain in place was considered "minute" by the District Court and "paltry" by the Court of Appeals. We share their evaluation of the "fit" between the city's goal and its method of achieving it. Slip op. at 7 (footnote omitted).

S. 674 similarly disregards the costs and benefits associated with the burden on speech imposed by the mandated warnings. The legislative findings ignore the enormous costs to the alcoholic beverage industry, the advertising industry, and print and broadcast media which run these ads, of implementing S. 674 and provide no support for any anticipated benefit. Effectively banning alcoholic beverage advertising on television and radio by rendering it cost-prohibitive bears no proportion to the goals asserted in the proposed legislation. Indeed, passage of S. 674 would undermine such goals by reducing the amount of information available, including announcements on drinking and driving currently run by the alcoholic beverage industry and the broadcast industry as a voluntary public service. S. 674's throw-the-baby-out-with-the-bathwater means of dealing with the problems of alcohol abuse is not in proportion to any interest served, and thus no "reasonable fit" exists between the mandated warnings and the asserted governmental interest.

IV. CONCLUSION

Recent Supreme Court decisions have strongly reaffirmed the protections for commercial speech, reinforcing the conclusion that the proposed warnings are constitutionally questionable at best. Even under prior case law, the Court has not upheld invasive and burdensome restrictions like those imposed by S. 674, and has greatly disfavored compelled speech except in narrowly defined corrective circumstances not present in truthful advertising about legal products. On behalf of the NAB we urge this Committee to examine the proposed Act closely in light of constitutional mandates and recommend against passage of this well-meaning but irreparably flawed legislation.

["Tough Choices Tackling the Teen Alcohol Problem," by Washington State Association of Broadcasters' Alcohol Task Force; "Kidsummit—How To Create a Kidsummit Against Drugs"; "Focus on Safe Boating"; "On-Air Initiatives"; "For the Twelve Days of Christmas"; "Congressional Families for Drug-Free Youth and the Congressional Club PSA Project"; "Prom and Graduation"; "Focus on Underage Drinking"; and "NAB Action Pack for Kids," by the National Association of Broadcasters, may be found in the committee files.]

[Also "Capital Cities/ABC, Inc. Commitment to Education and Awareness of the Hazards and Dangers of Alcohol Abuse, May 1993" with attachments, may be found in the committee files.]

The CHAIRMAN. Thank you. Mr. Becker.

STATEMENT OF JEFFREY BECKER, VICE PRESIDENT, ALCOHOL ISSUES, BEER INSTITUTE

Mr. BECKER. Thank you, Mr. Chairman. My name is Jeff Becker, and I am vice president of alcohol issues at the Beer Institute. Our organization represents the brewing industry, including national,

regional, and local brewers. In aggregate, we account for approximately 92 percent of beer sold in the United States.

I appreciate this opportunity to discuss an issue of great importance not only to the brewing industry but to our entire Nation. Before I present our position, however, I would like to briefly address another subject.

Every member of our industry extends their sympathy to Senator Thurmond and his family over the tragic loss they have experienced. We also agree with the Senator and other sponsors of the warning bill that more should be done to combat abuses and underage drinking.

That being said, however, we cannot agree that advertising warnings will provide a benefit, and we honestly believe, or we honestly fear that they will have several very negative side effects.

The basic assumptions underlying this bill are flawed. According to the logic that is inherent in this measure, the American public can be coerced into ignoring both common sense and civic decency through the mysterious power of advertising. According to the logic of this bill, people abuse alcohol beverages out of ignorance, that abuse can be unhealthy and dangerous. And finally, according to this bill, the best way to combat alcohol abuse is to focus on average, responsible adults, not that small minority who drink to excess.

Each of these premises is false. Beer advertising has been the subject of scientific research for years. Despite this extensive effort, no one has discovered a causal link between exposure to advertising and a decision to drink, much less a decision to drink abusively.

If advertising were the all-powerful force our critics claim it to be, surely a link would have been discovered by now. In fact, every indicator of alcohol abuse has declined over the past 10 years, a period in which our industry's advertising increased. Common sense tells us that this would not have happened if advertising could cause people to drink excessively.

Just as advertising is not the culprit, neither is ignorance of the risk associated with immoderate drinking. That being said, however, with all due respect, survey after survey demonstrates that virtually every American knows that too much drinking can be bad for them. Awareness of some types of risk may be higher than others, but no one can credibly contend that a person who abuses alcohol does so out of ignorance that they are putting their health and safety at risk.

Since a knowledge deficit is not the problem, reminding people of facts they already know cannot be considered an effective solution. Finally, seeking improvement through a strategy that focuses on average, responsible adults, but which will be ignored by alcohol abusers and underage drinkers is futile.

A study conducted by the Traffic Injury Research Foundation found that almost 80 percent of drunk drivers killed in 1991 had blood alcohol levels of .15 or higher, 1½ times the legal limit in most States. Surely we cannot expect the behavior of persons who drink to such elevated blood alcohol levels to be changed simply by reminding them of information that they long ago chose to ignore.

We know that the best way to respond to a problem is through tough enforcement measures that deal directly with alcohol abuse. We know these measures work, because the results say so.

It should be recognized that advertising warnings are not simply a futile approach. If imposed, they would also create significant problems. First and foremost, they could actually prompt the very behavior we are trying to discourage, particularly among young people, by making alcoholic beverages appear to be even more of a forbidden fruit than is presently the case.

Second, by devaluing the ads placed by brewers, this proposal would inevitably eliminate the brewers' advertisements from radio and television altogether. This is not a threat, nor is it an exaggeration. Brewers simply will not pay for advertising that the Federal Government has rendered worthless.

In the final analysis, there is no reason to believe that mandated warnings would provide any benefit whatsoever, but there are many reasons to consider them a bad policy option. While some would welcome this development as a de facto ban on beer advertising, the true effect would be to weaken the economic viability of our Nation's news and entertainment media, a development that should not be viewed lightly by this body.

We are proud of the fact that our industry has undertaken a major and sustained commitment to combating underage and abusive drinking. We are heartened by the fact that these efforts, along with those of many other people, are bearing fruit, and we are saddened that, despite the work that has been accomplished so far, drunk driving and alcohol abuse still remain factors in our society, but to say that a problem still exists is not to say that every proposed solution should be carried out.

Ad warnings will not help reduce abusive drinking or underage drinking, and they can cause other problems. We urge the committee to reject this bill and to seek more effective means of achieving our common goal, which we all share.

Thank you.

The CHAIRMAN. Thank you. Mr. Meister.

STATEMENT OF FRED A. MEISTER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, DISTILLED SPIRITS COUNCIL OF THE UNITED STATES

Mr. MEISTER. Thank you, Mr. Chairman. I am Fred Meister, president and chief executive officer of the Distilled Spirits Council of the United States, representing the producers and marketers of distilled spirits.

My statement today has changed very little since I testified before you just 13 months ago. The major reason is that since then there have been no new Government, scientific, or factual studies on alcohol advertising that would lead the Congress to question or reverse this committee's record from last year.

Last year, I believe the overwhelming consensus of this committee was that alcohol advertising warnings are not sound public policy, nor are they in the public interest. One Senator on this committee last year stated that "I would suggest that warning labels do not bring about good conduct, parents do." Another Senator on this committee said that "taking an approach that has the Federal

Government intruding into the private sector once more * * * draws great concern for me." A third Senator on this committee stated that "the consensus we seem to have reached here this morning is that there is adequate information about health risks."

Last year, then, in this very committee, the issue of advertising warnings was fully aired, analyzed, and dissected from every possible perspective—scientific, emotional; public, private; and industry and anti-industry.

The indisputable fact is now, 1 year later, there has not been one scintilla of new, scientific fact or Government findings that supports advertising warnings. There is absolutely no public policy reason to find that S. 674 is anything different from what it was last year—inappropriate at best and harmful at worst.

One purported justification for S. 674 is that our Nation's alcohol problems are raging out of control. Simply put, the United States is not awash in alcohol, and consumption declines are substantial. More importantly, substantial and long-term efforts by the public, Government, and the beverage alcohol industry are moving alcohol abuse trends in the right direction.

Statistics from the Departments of Transportation and Health and Human Services indicate that underage drinking is now at its lowest level since surveys began in 1974, and since 1982, drunk driving fatalities for all age groups have declined 22 percent and fatal accidents involving teenage drunk drivers are down 52 percent.

Other trends show similar declines, and note that each of these statistics is better now than it was when I reported it to you 13 months ago.

The only rational conclusion we can draw from these facts is that something has been and still is working. What is that something? In our view, it is most importantly the recognition by the public that they, as individuals, must accept responsibility for their behavior and change it when it is inappropriate.

It is also the fact that the comprehensive systems approach—which stresses research, education, treatment, rehabilitation, and tough law enforcement—is working.

Despite these facts and trends, there are those who ask: "What harm is there in placing warnings in alcohol advertising?"

Our answer is that there is harm to be done by requiring warnings in alcohol advertising. And that harm is potentially great.

Here we have an example of our American system working the way it was intended. We have identified a serious problem: the abuse of alcohol by a relatively small portion of the population.

Our Federal Government has contributed money to the recognition and research of this problem. Parents, schools, citizens, the media, and the beverage alcohol industry have all worked to help combat alcohol abuse and drive the trends down.

I believe that if Congress passes this bill it will tell the American people that significant, measurable progress through self-restraint, responsible action, and community effort means.

DISCUS and its member companies have a long and well-recognized history of promoting education, research, and responsible use.

Through the DISCUS Code of Good Practice, the liquor industry voluntarily refrains from advertising on radio and television, the most widespread means of brand advertising ever developed. We restrict advertising to adults, and we prohibit advertising to minors.

We believe there are other compelling arguments for rejecting S. 674. First, our industry has a first amendment right to employ the same advertising and brand marketing practices used by other U.S. advertisers.

Second, there is no proven link between advertising and consumption, let alone abuse.

In a 1990 report to Congress, Health and Human Services stated that "Research has yet to document a strong relationship between alcohol advertising and alcohol consumption."

Moreover, in a 1991 poll by the Surgeon General, youth were asked, "Do alcohol ads make you want to drink alcohol?" An overwhelming 86.2 percent responded no.

Third, public awareness of the risks associated with alcohol abuse is very high. The problem of abuse absolutely is not one of information deficiency.

Finally, our industry's advertising already is heavily regulated by the Government. BATF prohibits advertising that is "false, misleading, obscene, or indecent." The FTC monitors industry ads to prevent unfair and deceptive advertising.

We hope we will continue with these proven actions to reduce alcohol abuse and not divert scarce resources and attention to S. 674.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Meister follows:]

PREPARED STATEMENT OF FRED MEISTER

I am Fred Meister, President/CEO of the Distilled Spirits Council of the United States, representing the producers and marketers of distilled spirits in the United States. We stand second to none in our concern about the abuse of our products. We unequivocally oppose drunk driving; illegal, underage drinking; and all forms of alcohol abuse. We also recommend that, before pregnant women drink, they consult their physicians about alcohol and all other health-care issues.

My written statement has changed very little since the last time I testified before this Committee, just 13 months ago. The major reason my testimony is little changed is that, in the past year, there have been no new government, scientific, or factual studies on alcohol advertising that would lead the Congress to question or reverse this Committee's record from last year.

Last year, I believe the overwhelming consensus of this Committee was that alcohol advertising warnings are not sound public policy, nor are they in the public interest.

Last year, one Senator on this Committee stated that "I am impressed by the fact that national polls tell us that over 90 percent of people already know about the problem of misuse of alcohol. I would suggest that warning labels do not bring about good conduct, parents do." He went on to say that "if parents fail to instill good conduct and good habits and responsibility in the young men and women of our society, all the warning labels that we write are not going to be worth the paper that they are written on."

Another Senator on this Committee said that "absent scientific evidence to prove that S. 664 will solve these problems, I have some reservations about it. I am concerned that taking an approach that has the Federal Government intruding into the private sector once more, possibly to the point of violating the first amendment protection of advertisers, that draws great concern from me."

A third Senator on this Committee stated that "the consensus that we seem to have reached here this morning is that there is adequate information about health risks." He went on to say that "we ought to be dealing with treating the problem, not dealing with advertising and all this free speech kind of stuff."

Last year in this very Committee, the issue of advertising warnings was fully aired, analyzed, and dissected from every possible perspective—scientific, emotional; public, private; industry and anti-industry. I believe that the overpowering conclusion was that in its former life, S. 674 was bad legislation, and it remains so today.

The indisputable fact is that now, one year later, there has not been one scintilla of new scientific fact or government findings that supports advertising warnings. There is absolutely no public policy reason to find that S. 674 is anything different from what it was last year—inappropriate at best and harmful at worst.

Before serious consideration is given to legislation such as S. 674, which would significantly affect our industry's ability and right to advertise a legal product, the facts of alcohol use need to be understood. Simply put, the United States is not awash in alcohol, and most importantly, substantial and long-term efforts by the public, government, and the beverage alcohol industry are moving the trends in the right direction. Consider that statistics from the Departments of Transportation and Health and Human Services indicate that:

- underage drinking is now at its lowest level since surveys began in 1974;
- fatal accidents involving teenage drunk drivers are down 52 percent since 1982;
- "binge" drinking among high school seniors has dropped well over 20 percent in the past ten years;
- and drunk driving fatalities for all age groups declined 22 percent from 1982 to 1991.

In just the last year alone, we have seen improvements in many of the statistics used to gauge alcohol abuse in society as a whole. From 1990 to 1991, the percentage of youths aged 12 to 17 reporting alcohol use at some point in their lifetime decreased 3.7 percent; the percentage of youths aged 12 to 17 reporting alcohol use within the past month decreased 17.1 percent.

The only rational conclusion we can draw from these facts is that something is working. What is that something? In our view, it is most importantly the recognition by the public that they, as individuals, must accept responsibility for their behavior and change it. It is also, in our view, the fact that the comprehensive systems approach—which stresses research, education, treatment, rehabilitation, and law enforcement—is working.

Despite these facts and trends, there are those who ask: "What harm is there in placing warnings in alcohol advertising?"

Our answer is that there is harm to be done by requiring warnings in alcohol advertising. And that harm is potentially great.

Here we have an example of our American system working the way it was intended. We have identified a serious problem: the abuse of alcohol by a relatively small portion of the population.

Our federal government has contributed to the recognition of this problem through studies and public information efforts. And the private sector has responded. Parents, schools, citizens groups, the media, and the industry have all worked to help combat alcohol abuse.

If Congress passes this bill, it will tell the American people that significant, measurable progress through self-restraint, responsible action, and community effort means nothing when it comes time for Congress to make laws.

While the problems associated with alcohol abuse are decreasing, this does not mean that the problem is solved. Far from it. But, it does mean that we are making critical, effective, and lasting progress which should not be diverted by simplistic, anti-advertising proposals such as those contained in S. 674. Energy and resources are too scarce and the problem too important to go off in the wrong direction.

We strongly believe that education and effective, meaningful self-regulation are the critical variables in reducing alcohol abuse. We are proud to state that our industry has been a major contributor in both of these areas.

THE INDUSTRY RECORD

In opposing S. 674, let me tell you how the spirits industry has recognized its responsibility to combat alcohol abuse. It is an extraordinary record of self-regulation.

VOLUNTARY BAN ON TV AND RADIO ADVERTISING

The distilled spirits industry is unique in its history of voluntary self-regulation. In fact, since the end of Prohibition, the distilled spirits segment of the beverage alcohol industry has, through the DISCUS Code of Good Practice, refrained from advertising distilled spirits on the electronic media first radio (1936) and then television (1948). [This does not apply to spirits coolers, which are beverages containing not more than 7 percent alcohol by volume. Spirits coolers are a separate and dis-

tinct category from full-proof spirits, and must compete with other low-alcohol products.]

This fact cannot be overemphasized. We voluntarily do not advertise on radio or television, the most modern and widespread means of brand advertising ever developed. No one forced us to do it. We have done this by choice, despite the fact that U.S. law permits us to advertise our products on the electronic media.

SPIRITS INDUSTRY CODE OF GOOD PRACTICE

That is not the only thing our voluntary Code of Good Practice encompasses. Our industry has acknowledged openly the problems inherent in abusive consumption of beverage alcohol and the problem of underage drinking. That is why the Code of Good Practice contains recommendations that restrict the advertising of distilled spirits to adult consumers; prohibit the advertising of distilled spirits to minors; and ensure that advertising is presented in a tasteful and dignified manner. For example, the Code of Good Practice provides that "Distilled Spirits should not be advertised * * * [i]n any manner directed or primarily intended to appeal to persons below the legal drinking age." The settings and messages of spirits advertisements must be geared to legal drinking age consumers and employ actors and models who appeal to individuals over age 21.

In addition, the Code provides that distilled spirits will not be advertised:

- on the comic pages of newspapers, magazines, or other publications;
- in religious publications;
- or on the screens of motion picture theaters or similar assemblies.

Furthermore, advertisements must be "dignified, modest, and in good taste" and cannot claim sexual or physical prowess as a result of consumption of spirits. Advertisements do not contain the name of, or depict, Santa Claus or any Biblical character. Finally, no advertisement may depict a child or immature person, portray objects suggestive of the presence of a child, or be designed in any manner to be especially appealing to children or immature persons.

Spirits companies neither advertise nor conduct promotional activities on college campuses, nor do they advertise in college newspapers.

We believe in responsible use of alcohol for those adults who choose to drink. But in the case of people under age 21, responsible use means zero use. We live and abide by our Code and are proud of our record of adherence to it.

Our industry also is proud of its record in supporting education as the long-term and effective solution to the problem of alcohol abuse.

In the case of underage drinking, what is needed are, for example, well-rounded education programs in schools and communities; stricter enforcement of drunk driving and minimum-age purchase laws; and parental education and guidance. Advertising warnings are not the answer.

From the comprehensive solutions of the Presidential Commission on Drunk Driving (on which I served) to the vast array of education programs sponsored by the government and private sector, alcohol abuse is a problem which has been—and is being—addressed.

The comprehensive systems approach is the solution to problems associated with alcohol abuse. It is this approach that shows promise and has had results—not warnings in advertising.

For the vast majority of consumers, alcohol is not a problem. For the small minority who abuse the product, advertising warnings are not the answer. Based upon the best advice of experts in the fields of alcoholism, traffic safety, health, research, and education, DISCUS and members of the distilled spirits industry support practical approaches that are sensitive to society's diverse needs. Our efforts center on education, research, and responsible-use programs. We do not believe that the "bumper sticker" approach to education embodied in S. 674 is the appropriate approach to the complex problem of alcohol abuse.

Do we take our responsibility to deal with the problem of alcohol abuse seriously? Indeed we do. The industry is not a newcomer to this problem, nor is it a bystander. Our efforts began when Prohibition ended. It is an impressive record.

As I testified last year, the Distilled Spirits Council satisfies an average of over 50,000 requests for copies of our materials on drunk driving, alcohol abuse, underage drinking, and other alcohol-related topics every year. We regularly distribute posters and other educational materials to bars, taverns, and liquor stores across the country.

Since 1972, DISCUS has co-sponsored a widespread series of public service advertising campaigns, including the joint Department of Transportation (DOT)-industry campaign, "Friends Don't Let Friends Drive Drunk." Both the Secretary of the Department of Transportation and President Ronald Reagan commended this program.

Our most recent campaign, "Know the Meaning of the Word," has been underway for three years. This campaign states that if you are under age 21, moderation means abstinence. To date, campaign releases have generated more than 1,600 placements in newspapers throughout the country with a combined readership exceeding 15 million. We have also distributed more than 44,000 copies of the poster have been distributed to liquor stores, bars, taverns and restaurants throughout America. The radio public service announcement has aired more than 17,000 times on more than 200 stations in 45 states.

The industry has supported a number of model education, research, and treatment programs including the Harvard Medical School pioneering program lead by Dr. Jack Mendelson, who developed a model course on alcoholism diagnosis and intervention for medical school education.

As a member of the Licensed Beverage Information Council (LBIC—established in 1979 by all segments of the beverage alcohol industry), DISCUS has supported nationwide education programs concerning drinking and pregnancy. These programs have included nationwide distribution of posters and brochures to hospitals, health service clinics, and alcoholism councils; public service advertising; and the development of a model program of education, diagnosis, and intervention for the medical profession at Boston University School of Medicine to improve diagnostic, intervention, and treatment skills for women consuming alcohol during pregnancy.

LBIC has received two special awards from the Surgeon General for support of the "Healthy Mothers, Healthy Babies" Coalition, as well as two C-Flag awards from President Reagan for outstanding corporate community action programs.

LBIC has also sponsored a major project with the American Medical Association to help physicians better diagnose and treat the disease of alcoholism. After the program's first television airing in December 1991, the AMA received a record number of requests for copies of the program. In the words of Dr. Enoch Gordis, Director of the National Institute on Alcohol Abuse and Alcoholism, "This program * * * is a fine example of the good that can come from collaborative efforts in the alcohol field."

In the case of underage drinking, we strongly believe that responsible use means no use. We have developed and funded the development of educational materials for use in elementary schools, secondary schools, high schools, and colleges addressing underage drinking.

Most of our member companies are also members of The Century Council, which represents brewers, distillers, and vintners from across the country. The Century Council is currently conducting an extensive campaign to curb drunk driving and eliminate underage purchase.

All these efforts do not even scratch the surface of what DISCUS member companies do themselves with regard to self-regulation and responsibility/education programs. These efforts are far too numerous and extensive to itemize, but suffice it to say they are above and beyond what DISCUS does on its own.

In short, the distilled spirits industry has supported and continues to support comprehensive education and treatment programs—not simplistic and unnecessary warnings.

ADVERTISING WARNINGS UNNECESSARY

Having described our industry's record of self-regulation and responsibility, let me turn to the warning approach contained in S. 674. We do not believe the legislation is necessary for a number of reasons.

FIRST AMENDMENT RIGHTS

Alcohol is a legal product for American adults. The distilled spirits industry has a First Amendment right to employ the same advertising and brand-marketing practices used by other U.S. advertisers. Our industry should not be singled out and discriminated against.

ADVERTISING WARNINGS ARE UNNECESSARY—NO PROVEN LINK BETWEEN ADVERTISING AND CONSUMPTION OR ABUSE

Underlying S. 674 is the assumption that there is a causal link between alcohol advertising and alcohol consumption or abuse. Yet, Dr. Block, co-author of the 1981 study referenced in the S. 674 findings for the assertion that advertising affects consumption, forcefully refuted this characterization of his study in written testimony to the Committee last year. In that statement, Dr. Block also provided detailed arguments opposing alcohol beverage warnings in advertisements.

In his testimony, Dr. Block stated:

> My interest in submitting testimony to this Subcommittee was triggered when I became aware the preamble to S.664 refers to our study as support for the proposition that a 'significant relationship' exists between exposure of youth to alcohol advertising and drinking behavior and attitudes that can lead to certain forms of problem drinking. This reference distorts the substance of our report and ignores the caveats we put into the report concerning interpretation of the data
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> It is quite remarkable that this very weak correlation [between self-reported alcohol advertising exposure] with consumption is now sometimes cited as the reason it is necessary to regulate or curtail advertising. As I said before, the study only indicated a correlation between advertising and consumption for this group, not a causal relationship. Certainly the study does not demonstrate that exposure to alcohol advertising causes consumption of alcohol that would not otherwise occur, because the design of our study doesn't permit anyone to reach that conclusion. Most importantly, from my review of the scientific literature I can find no persuasive evidence that advertising causes nondrinkers to start drinking, or that advertising causes drinkers to become abusers. In fact, based on the results of our content analysis, if anything the advertisements we studied would reinforce only moderate consumption, because that was virtually all that was portrayed in the ads.

In light of the fact that Dr. Block's study has been erroneously characterized on numerous occasions, we trust that this Committee now will view this study appropriately. In fact, the FTC nearly a decade ago criticized and rejected this study, stating that "[t]he general conclusion is that the work of Atkin & Block suffers from methodological flaws serious enough that it cannot be used to draw any conclusions concerning the effect of advertising on the total demand for alcohol or on the degree of alcohol abuse."

It also bears emphasis that Dr. Block's conclusion that there is "no persuasive evidence that advertising causes nondrinkers to start drinking, or that advertising causes drinkers to become abusers" is a conclusion that is mirrored in virtually every other study. For example, in 1985 the FTC concluded that its "review of the literature regarding the quantitative effect of alcohol advertising on consumption and abuse found no reliable basis to conclude that alcohol advertising significantly affects consumption, let alone abuse" and that "[a]bsent such evidence, there is no basis for concluding that rules banning or otherwise limiting alcohol advertising would offer significant protection to the public."

Subsequent studies have confirmed the FTC's 1985 finding. A 1990 Department of Health and Human Services' report to Congress stated that "[r]esearch has yet to document a strong relationship between alcohol advertising and alcohol consumption." Similarly, a 1991 study reported in the Journal of Studies on Alcohol compared alcohol beverage sales in the Canadian province of Saskatchewan before and after an almost total advertising ban was ended in 1983. The study found no proof "that alcohol advertising is a contributory force that influences the overall level of consumption of alcoholic beverages."

There is other empirical evidence from the United States and abroad that also confirms that liquor advertising restrictions do not reduce consumption. The Joint Committee of the States to study Alcoholic Beverage Laws found that "the restrictiveness of [state] advertising control had no effect upon per capita consumption of alcoholic beverages." Similar results have been found for British Columbia, Manitoba, Norway, Finland, and the (former) Soviet Union, where restrictions have not resulted in a change in alcohol consumption or a reduction in alcohol abuse.

Drinking habits, rather, are influenced by peers and parents. For example, a 1990 Roper poll of adults found that of seven factors surveyed that might cause young people to start drinking, 70 percent named peer influence as an important factor, followed by 48 percent who cited parental influence. All other factors ranked far down the list with advertising finishing last, cited by only eight percent of respondents.

A 1991 Roper Youth Report found that 60 percent of the children polled between the ages of eight and 17 years stated that their ideas regarding whether they drink alcohol or not are derived from their parents; 17 percent reported that such ideas are derived from their best friends; 2 percent reported that such ideas are derived from what they see in advertisements.

The underlying data of the Surgeon General's own 1991 national survey of junior and senior high school students regarding their drinking habits, access, attitudes, and knowledge also indicate that advertising and consumption are not linked. When

asked the question "Do alcohol ads make you want to drink alcohol?" an overwhelming 86.2 percent of those youths surveyed responded no.

ADVERTISING WARNINGS UNNECESSARY—HIGH DEGREE OF AWARENESS

Warnings are generally redundant if they convey information that is widely known. In fact, their proliferation can undercut the effectiveness of warnings since the public tends to disregard all of the information. This is the case with the warnings in S. 674.

In testimony before the Senate in 1989, William MacLeod, Director of the Federal Trade Commission Bureau of Consumer Protection, discussed awareness:

> It is questionable * * * whether the circumstances surrounding drunk driving warrant mandating health warnings in alcohol ads as a method for reducing the problem. First, there is already a high consumer awareness that drinking impairs the ability to drive. Drunk driving generally is not an issue of information deficiency, but of willful, abusive or risky behavior. For the government to be effective, it should focus its efforts directly on curbing the inappropriate behavior.

Noting that people are increasingly ignoring warnings because they cannot heed the recent avalanche of warnings, Mr. MacLeod's testimony stated the following:

> * * * it would seem prudent to avoid overuse of one of the government's most important forms of health alert—a general health hazard warning—if it is possible to communicate the information as effectively through other means.

Alcohol beverages are an excellent example of a product for which the risks of abusive consumption are so well known by the public that warnings are unnecessary. For example, in the case of drunk driving, virtually all Americans know the dangers of drinking and driving a car or operating machinery.

There is also widespread awareness among women concerning the use of alcohol beverages during pregnancy. For example, a 1992 Roper poll showed that 98 percent of the public was aware of the reported risks of alcohol consumption during pregnancy.

Another example indicating nearly universal awareness of the risks associated with alcohol abuse or misuse is found in a November 1985 Gallup poll wherein 97 percent of the public view alcoholism as a serious national problem.

The American people understand the problems associated with the abuse of alcohol—thanks in no small part to the public education efforts of the beverage alcohol industry.

ADVERTISING WARNINGS ARE UNNECESSARY—INDUSTRY HEAVILY REGULATED

The distilled spirits industry already is subject to comprehensive federal and state regulations. There is no vacuum in the area of advertising regulations which necessitates the imposition of advertising warnings.

Both the federal and state governments regulate beverage alcohol advertising to ensure fairness and disclosure in advertising. The Federal Alcohol Administration Act ensures that all alcohol advertising conforms to Bureau of Alcohol, Tobacco and Firearms (BATF) regulations. The FAA Act and BATF regulations prohibit advertising that is "false, misleading, obscene or indecent" or which makes "[c]urative and therapeutic claims.

The Federal Trade Commission also monitors beverage alcohol advertising to prevent unfair and deceptive advertising. In short, there is no vacuum of advertising regulations at the federal level.

Nor is there any lack of regulation at the state level. By virtue of the 21st Amendment, states can regulate the sale and transport of alcohol. States have been active in both the regulation and taxation of our products. States impose statutes and regulations regarding advertising and promotion of our products.

DISTILLED SPIRITS INDUSTRY IN PERSPECTIVE

Finally, in evaluating the need for S. 674-type advertising warnings as an answer to the complex problem of alcohol abuse, it may be instructive to put the distilled spirits industry and the problem of alcohol abuse in some perspective.

The distilled spirits industry is not a growing industry. In fact, it is shrinking—in no small part because of the changing lifestyles of many Americans. Americans are drinking less.

In 1974, for example, per capita consumption among adults was 3.14 gallons. By 1991, the figure was 1.97 gallons, a decline of 37 percent in 17 years. With a second year of no growth in volume sales in 1982, the industry began to cut back on advertising. Today we are spending one-third less on liquor advertising than in 1982. Not

only are measured media advertising expenditures decreasing because of the drop in consumption, but on a per-case basis distillers are spending less on advertising. It should be noted that decreases in advertising expenditures have followed consumption declines, not the reverse.

It also might be instructive to put our advertising expenditures in perspective. Consider, for example, that adjusted for inflation, U.S. liquor advertising expenditures today are at the lowest level since the 1940's, roughly 62 percent below 1979 levels. And of the $41 billion spent on advertising for all products in 1990, less than three-quarters of one percent was spent on distilled spirits. By contrast, $2.3 billion was spent on advertising of toiletries and cosmetics; $5.7 billion on automotive advertising; $1.7 billion on over-the-counter drugs and remedies; and $1.2 billion on snacks and soft drinks.

In short, the distilled spirits industry is not the advertising monolith that some would have us believe.

In terms of drunk driving, the government's own statistics bear note because, despite popular beliefs, these statistics show that drunk driving is on the decline. This is an important and encouraging trend.

Former Transportation Secretary Andrew H. Card announced earlier this year that highway fatalities are at their lowest level in 30 years. Data from the National Highway Traffic Safety Administration show that alcohol-related traffic fatalities in 1991 were 9.9 percent below the 1990 level and seven percent below the target set by the federal government for the year 2000. The level of alcohol-related traffic fatalities has already met and surpassed the goal set forth in "Healthy People 2000."

The proportion of fatal accidents involving drunk drivers has decreased from 30 percent in 1982 to 23.9 percent in 1991. Overall, the proportion of traffic fatalities involving intoxicated persons dropped from 46.3 percent in 1982 to 38.5 percent in 1991.

In the case of young people, the number of drivers involved in alcohol-related fatal accidents dropped significantly between 1982 and 1991.

For those under 18, the proportion of drivers involved in alcohol-related fatal accidents dropped from 30 percent in 1982 to 17.8 percent in 1991. For those in the 18 to 20 age group, the proportion dropped from 48.2 percent to 34.9 percent. The actual number of drivers involved fell by 46 percent in the under-18 age group and by 44 percent in the 18 to 20 age group.

In sum, of all the drivers under age 21 involved in fatal accidents, the number which had consumed alcohol fell by almost one-half in the last nine years.

One last indicator showing that abuse is declining are the latest government surveys of the nation's high school seniors and teens. These indicate that the level of teenage drinking in every category is at its lowest level since the surveys began. For example, the proportion of 12- to 17-year-olds who ever drank alcohol declined by 34 percent from 1979 to 1991. "Binge" drinking among high school seniors has dropped more than 20 percent in the last ten years. To the same effect is a 1988 Roper poll which showed that the percentage of 18- to 24-year-olds who said they drive after drinking fell from 48 percent to 31 percent in just three years.

CONCLUSION

Mr. Chairman, in closing, as a most responsible industry, we know that alcohol abuse is a serious and legitimate public concern. We also know that much remains to be done. Yet, we also know that as a result of individual self-responsibility; industry self-regulation; and most importantly, education, we are making major strides in reducing alcohol abuse.

Let us continue to apply our dedication and resources to further reducing alcohol abuse by these proven actions, and not go off in the wrong direction with the anti-alcohol advertising proposals found in S. 674.

Thank you.

The CHAIRMAN. Thank you. Mr. Koch.

STATEMENT OF ROBERT P. KOCH, VICE PRESIDENT, FEDERAL GOVERNMENT RELATIONS, WINE INSTITUTE

Mr. KOCH. I am Bobby Koch, vice president of the Wine Institute, the industry association of 450 California wine producers. It is a privilege to speak on behalf of the Wine Institute, as well as the American Vintner's Association, a national association representing appropriately 350 wine growers in 36 States, and the Na-

tional Wine Coalition, an organization of 250 domestic and foreign members.

America's 1,300 wineries and over 8,000 growers comprise a significant agricultural industry that continues in the proud tradition of family owned farms in 43 States. Wine's rich heritage is an asset to our economy, culture, and healthy society which should be supported, not forced to take on additional burdensome regulations such as rotating warnings on our print and media advertising.

Our traditions, which began centuries ago in Europe, define us as agriculture, cuisine, tourism, not sin. When it comes to the restrictive conditions that S. 674 places on our ability to promote our product, the American wine industry is united and stands together with one voice in opposition. The proposed rotating warnings would impose significant burdens on our industry, especially to small producers who rely on promotional and point of sale materials such as catalogues, brochures, newsletters, and menus.

Fifteen years ago the Wine Institute adopted a comprehensive code of advertising. In subsequent years, the American Vintner's Association and most of the State wine associations voluntarily ratified its provisions. In 1987 the code was expanded to include wine coolers.

Among its guidelines, the code condemns any advertising with particular appeal to persons below the legal drinking age, such as those using models under age 25, music, language, or gestures directed at those below the legal drinking age; the use of past or present professional athletes, rock stars, or heroes of the young; or placement of advertising in magazines, newspapers, or television programs aimed at young people.

Wine advertising and promotional materials stress that wine should be a moderate accompaniment to food. Research shows that this approach has contributed to responsible behavior.

These voluntary provisions have worked well. In fact, the Wine Institute and others in the U.S. wine industry have voluntarily adhered to these standards and the code has been lauded on the floor of the Congress as a model of social responsibility.

It is particularly inappropriate to attack moderate wine consumption. Wine is accorded a prominent place in many cultures and religious practices. Furthermore, a growing body of scientific evidence suggests positive health benefits from moderate wine consumptions. In just the last 2 years, more than a dozen studies conducted by respected research institutions such as Harvard and the Boston School of Medicine found that moderate alcohol consumption may reduce the risk of coronary heart disease.

The rotating warnings that would be required by S. 674 would create the unfair and inaccurate impression that even moderate consumption of wine is hazardous. This is especially misleading since many recent studies have associated moderate wine consumption with a healthy diet. Harvard University's School of Public Health included moderate wine consumption in the optimum "healthful" mediterranean diet, which is associated with increased life expectancy and a decreased risk of coronary heart disease. Studies have also shown that wine is generally consumed in a mealtime home setting.

We acknowledge that abusive drinking is bad for you. That message is already widely broadcast by education, religion, the family, and the media. Alcohol abuse is a complex public health problem. Simplistic messages imply that by providing a warning something is being done about the problem. Recent research findings suggest that many cases of alcoholism may have a genetic basis. Further research may produce efficient ways of identifying individuals at risk so that targeted education, intervention, and treatment programs can be designed.

We acknowledge with deep interest that there are definite and legitimate social issues that must be addressed, such as passing tougher drunken driving laws and tougher enforcement. Researchers tell us that wine is responsible for 2 to 3 percent of drunk driving incidents. Our response is that is 2 to 3 percent too much. We will energetically continue to work with everyone involved, our communities, our schools, the media, our parishes, and the Government. Government has a role, but it does need to attack the moderate, responsible enjoyment of our product or blur the distinction between use and abuse.

Our work will never end, but in partnership we can continue to improve and reduce alcohol abuse, drunk driving, and underage drinking without breaking the backs of wine growers and others, nor punish or take away a very valuable concept—moderate behavior.

Mr. Chairman, the American Vintner's Association, the National Wine Coalition, and the Wine Institute thank the committee for this opportunity to be here today.

The CHAIRMAN. Thank you, sir. Professor Neuborne.

STATEMENT OF PROF. BURT NEUBORNE, NEW YORK UNIVERSITY SCHOOL OF LAW

Mr. NEUBORNE. Thank you, Senator.

Mr. Chairman, members of the committee, my name is Burt Neuborne. I am a professor of law at New York University and I appear this morning on behalf of the Association of National Advertisers, the Nation's principal community of commercial speakers. And I thank you for this opportunity to express to you the concerns that ANA has over the serious constitutional problems that are posed by S. 674.

I have spent much of my career attempting to protect controversial speakers. I urge the committee this morning to take the approach that should be taken whenever an attempt at managed speech is being considered by a governmental entity. And that is to take a cool look—not an emotional look, but a cool look at the claim that social problems can somehow be solved by Government-managed speech.

There can be no quarrel with the fact that there is a problem. There is a problem of alcohol abuse in the United States. But we have to define the problem precisely. As Senator Danforth carefully pointed out this morning, the problem is not the "use" of alcohol, it is the "abusive use" of alcohol. It is self-delusive to believe that the abusive use of alcohol by underage minors or by abusive drinkers will be dealt with effectively by the simple rote recitation of a series of Government-mandated warnings.

Not only is S. 674 not calculated to deal with the real problem, but it would cause a serious constitutional problem were it enacted. Make no mistake about it, this is a first. You are crossing an important line here. This would be the first time that a Government entity took the position that it had the power to require advertisers to speak in ways that they did not wish simply to inform the public, not of risks associated with the use of the product, but risks associated with the abusive use of the product.

You have never done that before. Tobacco warnings deal with warnings about the use of the product; they do not deal with warnings about the abusive use of the product. There is no product on the market today that cannot be used abusively. Cars can be used abusively. Red meat can be used abusively. Calories are used abusively. Pharmaceutical drugs are used abusively.

Once you go down the road of saying that the Government has the power to require advertisers, not merely to be truthful in their advertising, but to also engage in privately financed public education campaigns, using their own private property, you have crossed a major line. You have crossed a line where you will be in a position of seizing the property of advertiser time after time to carry out public education campaigns, not because the advertisers have said anything that is not truthful, but simply because someone thinks it is a good idea to use them as the vehicle for general public education.

That would, we believe, be a dangerous first amendment line to cross. Mandated speech raises serious first amendment problems. There is a right to be free from speech just as there is a right to speak. The Supreme Court has recognized over and over again that when Government makes someone say something that they do not want to say, that is a violation of the first amendment.

Indeed, in a case as recently as 1986, Justice Powell struck down an attempt by California to require public utilities to make their billing envelopes available for the messages of third persons. Justice Powell said "it is their property." You cannot take someone's property and tell them that they have to use it to deliver a message they do not want to deliver.

Of course, we can discuss the moral implications of this for a long time. It may well be that advertisers ought to do this. The real legal question is can the Government make them do it if they do not want to, and that raises a very serious first amendment problem.

Proponents of S. 674 try to get around the constitutional issue in three ways. First they say this is commercial speech, and after all, commercial speech is not really very important. For much of the Nation's history it was not really protected, and therefore we can do to you pretty much what we want to. You may think you have first amendment protection, but the *Posadas* case makes it an illusion. We can always regulate you because, after all, we could have banned you to begin with.

Well, I have two answers to that. First, the Supreme Court explicitly rejected that argument this term in *Discovery Network*. Cincinnati argued that because commercial speech was of low value, it had the power to simply say "OK, we will ban commercial speech

from newsracks and we will let newspapers use the newsracks because they are more important."

The Supreme Court explicitly rejected Cincinnati's argument, recognizing, as they have since 1975, that commercial speech is very important to this country. It is the engine that makes a free market go. Just as political speech is necessary for a functioning political democracy, advertising and commercial speech is necessary for a functioning free market economy. If the Government can control the flow of commercial speech, the Government can control the economy. If the Government can control the flow of political speech, the Government can control elections. The first amendment is designed to prevent both, and this law flies directly in the face of that.

The second argument I think is the one that proponents rely on most. That is that there is need out there for this information. If there is a need out there for the information, surely the first amendment does not stop the Government from requiring that the information be disseminated.

I have no quarrel with that. The problem is that they have not done their homework. They have not established that the problem of alcohol abuse is caused by ignorance and that warnings will cure the ignorance and therefore cure the problem. It is exactly that syllogism that they have not closed.

Alcohol abuse is not caused by ignorance. It is caused by people who know they should not drink; who know what the risks are, and they do it anyway. It is not an information problem; it is a behavior problem. The problem is how do we deal with that behavior. ANA believes that the way you do not deal with that behavior is by a series of ritual warnings that give the illusion that we are dealing with the problem, but do not do anything significant about the underlying problem , and do so at a tremendous cost.

I will simply close by saying that Representative Kennedy's own commercials show what is really at stake here. I know that everybody was clicking the stopwatches, and the stopwatches were going from 6 to 7½ seconds. Those warnings took between 6 and 7½ seconds of a 30 second spot. That is a 25 percent confiscation of the property of the advertisers.

And for what? For what? Simply to have some sort of ritual mandated warning that will not solve the problem. Whether or not the Supreme Court would uphold this, and I do not think they would, this body should not enact legislation that attacks the fundamental underpinnings of the first amendment simply to engage in an act of cosmetic lawmaking.

Thank you.

[The prepared statement of Mr. Neuborne follows:]

PREPARED STATEMENT OF BURT NEUBORNE

My name is Burt Neuborne. I am a Professor of Law at New York University. For much of my career, I have been an active civil liberties lawyer seeking to defend fundamental freedoms guaranteed by the First Amendment. I appear today on behalf of the Association of National Advertisers, Inc., (A.N.A.), the nation's principal community of commercial speakers, to discuss the difficult free speech issues posed by the proposed requirement of S. 674 that all advertisements for alcoholic beverages carry one of seven government-mandated warnings about the dangers of alcohol abuse.

There can be no quarrel with the motives of the sponsors of S. 674, or about the seriousness of the problem they have identified. It is high time that the public health problem of alcohol abuse receives the attention it deserves from government officials. To the extent that these hearings focus public attention on the need for a coordinated and effective public health response to the problem of alcohol abuse, they perform an important public service.

As commercial speakers, A.N.A.'s concern with S. 674 goes to its efficacy, and to the troubling constitutional precedent it would establish. S. 674 asserts, for the first time, a general governmental power to mandate that a truthful advertisement for a lawful product must include government-mandated warnings about the risks created by the product's abusive, as opposed to normal, use. While S. 674 deals with mandated warnings about the abusive use of alcohol, the assertion of governmental power underlying S. 674 applies equally to advertisements for virtually every product, ranging from automobiles (the abusive use of automobiles kills 50,000 people each year); to food products (abusive dietary behavior is an extremely serious public health problem, whether measured by eggs and red meat/cholesterol or sugar/calories) to pharmaceutical products. Since virtually every product is capable of abusive use, the real issue posed by S. 674 is whether the government may force an advertiser to use its private property to become a mobile billboard for a content-specific, government-mandated public health message. In short, can the government force a commercial speaker to be an involuntary messenger for the State?

In A.N.A.'s view, the speculative benefits that might flow from S. 674 do not justify its significant constitutional cost. S. 674 is merely a cosmetic substitute for a real solution to alcohol abuse. S. 674 mandates the bureaucratic repetition by advertisers of rote warnings about things that are already common knowledge—a practice that may give the illusion of effective governmental action, but that will not materially increase public awareness and will certainly not reach the segment of the population most in need of help. Frankly, it is hard to imagine a public health initiative less likely to affect the behavior of alcohol abusers than mandated, rote warnings. Thus, A.N.A. believes that S. 674 achieves only cosmetic ends at serious cost to constitutional values.

At this point, the important difference between "ought" and "must" in this setting should be stressed. Powerful moral arguments exist that advertisers "ought" to warn the public about the abusive use of a product. In fact, the beverage industry recognizes such a moral responsibility and currently spends millions of dollars a year in an effort to persuade consumers not to engage in abusive misuse of alcohol. It is the essence of our First Amendment heritage, however, that government should not impose its view of what individuals "ought" to say by dictating what speakers "must" say. One of our most important free speech values is the right to be free from efforts by the State to compel individual speakers to parrot the party line. In A.N.A.'s view, S. 674 threatens to replace existing, voluntary efforts by advertisers to deal with alcohol abuse with an enormously expensive, bureaucratically mandated program of ineffective rote warnings that will do virtually nothing to solve the problem, except to give the illusion that government is dealing with it, while inflicting real damage on the right to be free from government mandated speech.

1. THE RIGHT TO BE FREE FROM GOVERNMENT-MANDATED SPEECH

It is now absolutely clear that content-specific, government-mandated speech poses a serious First Amendment problem. The Supreme Court has repeatedly ruled that forcing a speaker to use its private property to disseminate someone else's content-specific message is unconstitutional. For example, in *Pacific Gas & Electric Company* v. *Public Utilities Commission*, 475 U.S. 1 (1986), Justice Powell, writing for the Court, struck down an effort by California to require public utilities to permit third persons to deliver messages in the utility's billing envelope. Justice Powell stressed that it would constitute an interference with both free speech and property rights to allow the government to, in effect, seize a speaker's private property and use it for a government-mandated message. If anything, *Pacific Gas & Electric* was a far stronger case for government-mandated speech than is S. 674, since the billing envelope at issue in that case was arguably public property. S. 674 makes no pretense of confining itself to speech on public property. S. 674 seizes the private property of advertisers in every fora and commands that a substantial proportion of it be used to transmit a government-mandated message. It, therefore, undoubtedly raises a serious First Amendment issue. See *Tornillo* v. *Miami Herald Publishing Co.*, 418 U.S. 241 (1974) (government may not mandate access to privately-owned newspaper); *Wooley* v. *Maynard*, 430 U.S. 705 (1977) (government may not force driver to use license plate to deliver message). See generally *West Virginia State*

Board of Education v. *Barnette*, 319 U.S. 624, 642 (1943) (invalidating compulsory flag salutes).

2. S. 674 MAY NOT BE JUSTIFIED BECAUSE COMMERCIAL SPEECH IS NOT "VALUABLE" ENOUGH TO WARRANT SIGNIFICANT FREE SPEECH PROTECTION

Since a statute compelling a speaker to use its private property to disseminate a government-mandated message undoubtedly poses serious constitutional problems, supporters of S. 674 may seek to defuse constitutional concern by arguing that forced speech by advertisers does not warrant significant First Amendment protection because commercial speech is not as "valuable" or "important" as political speech. But that argument, advanced in earlier hearings on predecessors to S. 674, has now been wholly discredited by *City of Cincinnati* v. *Discovery Network, Inc.*, U.S. 61 U.S.L.W. 4272 (March 24, 1993). In *Discovery Network*, Cincinnati argued that it could deny commercial advertisers access to sidewalk newsracks used by newspapers because advertising was less valuable than newspapers. Justice Stevens, writing for the Court, explicitly rejected Cincinnati's argument, stating:

> * * * we are unwilling to recognize Cincinnati's bare assertion that the "low value" of commercial speech is a sufficient justification for its selective and categorical ban on newsracks dispensing "commercial handbills". 61 U.S.L.W. at 4276

As the Supreme Court recognized in *Discovery Network*, the assertion that commercial speech is less important than noncommercial speech is wrong, both at the level of society and the individual. The First Amendment protects political democracy and free markets by assuring the uncensored flow of information on which each depends. Political democracy requires robust free speech protection in order to assure that voters receive information needed to make an informed choice. See Meiklejohn, Free Speech and Its Relationship to Self-Government (1948). Free markets also depend upon informed choice. *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U.S. 748, 764-65 (1976) (recognizing relationship between commercial speech and efficient markets). See Coase, Advertising and Free Seech, 6 J. Legal Stud. 1 (1977). Consumers vote with their dollars, just as citizens vote with their ballots. If government can casually control the flow of information to voters, the free political choice at the core of a functioning democracy is imperiled. See Kalven, The New York Times Case: A Note on the "Central Meaning of the First Amendment", 1964 Sup. Ct. Rev. 191. Similarly, if government can casually control the flow of commercial information to consumers, the free market choice at the core of our economic system is imperiled. See Redish, The First Amendment in the Marketplace: Commercial Speech and the Values of Free Expression, 39 Geo. Wash L. Rev. 429 (1971). Thus, the argument that S. 674 is constitutional merely because it regulates commercial speech is no longer tenable.

3. S. 674 MAY NOT BE DEFENDED AS AN EFFORT TO CORRECT AN OTHERWISE FALSE AND MISLEADING ADVERTISEMENT

Forced by *Discovery Network* to acknowledge that commercial speech is entitled to significant First Amendment protection, supporters of S. 674 may argue that government-mandated warnings about alcohol abuse are constitutional because they provide more, rather than less, information for consumers. But such an argument fails on at least two levels. First, it assumes that a regime of mandated, rote warnings will, in fact, provide more information to consumers about the risks of alcohol abuse than the existing system of voluntary speech. In fact, however, A.N.A. believes that rote warnings will provide virtually no usable information to the target group that needs it most. Alcohol abusers are notoriously immune to warnings. It is not ignorance that leads to alcohol abuse, but a refusal to take seriously the virtually universal knowledge in our culture that excessive use of alcohol is dangerous. The key to dealing with alcohol abuse is, therefore, not ritual warnings, but governmental behavior that takes alcohol abuse seriously. Vigorous enforcement of existing law and adequate funding of public health programs are the key to dealing with alcohol abuse; not empty gestures. We will begin to come to grips with alcohol abuse in our society when bars are closed if they sell liquor to minors; when cars are seized if they are driven by drunk drivers; when under-age students are disciplined if they break the law; when public health clinics for alcohol abusers are available and adequately funded; and when schools provide effective public health education. Ritual warnings are simply not a substitute for a genuine societal commitment to solving the problem. Moreover, the enormous expense associated with the mandated warnings will dry up the existing, voluntary methods of educating the public. Resources are finite. If government forces advertisers to spend vast sums on ineffective

warnings, they simply cannot continue the more effective programs that currently exist.

In any event, as a First Amendment matter, the government may not force a speaker to deliver a government-mandated message unless it demonstrates a genuine need for the mandated speech. Where a communication is false or misleading, or where the omission of a material fact would be likely to mislead a listener, the government may, of course, require corrective speech. *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626 (1985). But S. 674 is not aimed at speech that is false or misleading. It is designed to apply to all advertising of alcohol, even the vast bulk of the advertising that is not even arguably false or misleading. Thus, S. 674 is clearly not aimed at correcting false or misleading statements. Rather, it is an effort to conscript an advertiser's private property to deliver a government-mandated public health message that is already common knowledge. Since *Zauderer* explicitly links the government's power to compel speech to its power to prevent deception, S. 674 raises obvious First Amendment issues.

Even if, however, one assumes that government may go beyond its power to correct deception and order a commercial speaker to use its private property to deliver general educational messages, such compelled speech cannot be upheld unless the government develops a factual record demonstrating: (1) public ignorance of the information being transmitted; (2) the efficacy of the mandated speech as a form of public education; and (3) the effectiveness of the mandated speech in dealing with the problem at-issue. In short, before the government can force a speaker to use its private property to deliver public educational warnings, it must show that a need for the warnings exists; that the warnings are likely to be an effective means of public education; and that potential alcohol abusers are likely to heed them.

In an effort to meet its substantial burden of justification, S. 674 contains numerous "findings" about the need for warnings. Proponents of S. 674 apparently argue that mere Congressional recitation of the need for warnings and their hoped for efficacy in curbing alcohol abuse satisfies the burden of justification for compelled speech. However, such a casual approach to the government's obligation to demonstrate a factual basis for compelled speech ignores the Court's recent decision in *Edenfield* v. *Fane*, U.S 61 U.S.L.W. 4431 (April 26, 1993). In *Edenfield*, the Court struck down a Florida rule forbidding face-to-face commercial solicitations by CPA's. Although the Court found that Florida's interests—avoiding deception and maintaining CPA independence—were substantial, it ruled that the speech ban did not "directly advance" the interests involved. Justice Kennedy, writing for the Court, stated:

> It is well established that "(t)he party seeking to uphold a restriction on commercial speech carries the burden of justifying it." *Bolger* v. *Youngs Drug Products Corp.*, 463 U.S. 60, 71, n.20 (1983). * * * This burden is not satisfied by mere speculation or conjecture; rather a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree. 61 U.S.L.W. at 4433.

The harms of alcohol abuse that are recited in the findings section of S. 674 are, of course, real ones. But merely asserting the obvious fact that alcohol abuse is a serious problem in our society does not justify government-mandated speech. Rather, the government must also show: (1) a relationship between alcohol abuse and public ignorance of the risks associated with its excessive consumption; and (2) a likelihood that mandated warnings will deal effectively with alcohol abusers. A.N.A. believes that, on the record before the Committee, neither showing has yet been made. Instead, proponents of S. 674 rely upon the very "speculation or conjecture, deemed unacceptable in *Edenfield*.

The failure to carry a burden of justification for S. 674 is not surprising. The fact is, alcohol abuse is simply not caused by ignorance about the risks of excessive drinking. Alcohol abusers know that excessive drinking is harmful and dangerous; but they do it anyway. If the problem of alcohol abuse were as simple as curing public ignorance, we would be able to solve it quickly. But alcohol abuse occurs despite a pervasive knowledge of the risks associated with excessive drinking. Rote warnings will simply not add to the store of public knowledge about the risks of excessive drinking "in a material degree". Moreover, the abuser population is notoriously resistant to warnings. In short, on the record before the Committee, there is no persuasive evidence that mandated rote warnings will alter the behavior of alcohol abusers and materially alleviate the problem of alcohol abuse. If anything, the expensive, government-mandated rote warnings will make matters worse by driving out more effective voluntary speech.

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3. S. 674 CANNOT BE DEFENDED AS A DE MINIMIS INTERFERENCE WITH AN ADVERTISER'S CONSTITUTIONAL RIGHTS

Proponents of S. 674 may argue that government-mandated warnings pose only a de minimis interference with an advertiser's message. After all, they say, the government-mandated warnings merely supplement the advertiser's message, without materially interfering with its speech. A glance at the provisions of S. 674 belies such an assertion. Even if one ignores the substantial likelihood that the industry's response to S. 674 will be to lock in market shares by ceasing to advertise altogether, compliance with S. 674 would literally seize a substantial proportion of an advertiser's property and devote it to a government-mandated message. Advertising is not free. When an advertiser purchases space in a print medium or on radio or television, it acquires an important property interest to be used to convey the advertiser's message. Were government to supplement that property interest by purchasing additional space for a public health message, an advertiser might complain about the sending of mixed messages, but it would not have suffered a deprivation of property or been subjected to forced speech. S. 674 skips the technicality of purchasing additional space. It simply seizes a substantial proportion of the advertiser's space and conscripts it for a government-mandated message. Depending upon the nature of the medium and the length of the commercial message, compliance with S. 674 would require surrender of a significant block of the advertiser's property. Radio spots would become virtually impossible, since the oral reading of the warning would take up much of the time. Television spots would become difficult, if not impossible, since the graphic presentation of the warning would consume significant blocks of time. Print media would require bureaucratic approval and the substantial sacrifice of space. Thus, as in *Pacific Gas & Electric*, the net result of S. 674 would be an interference with both free speech and private property.

4. S. 674 IS NOT SUPPORTED BY THE HOLDING OF POSADAS

While dicta in *Posadas de Puerto Rico Assoc. v. Tourism Co.*, 478 U.S. 328 (1986) has been cited for the proposition that commercial speech is subject to plenary regulation if the product in question may be wholly banned, the actual holding of the Court was far narrower. Moreover, this Term's commercial speech opinions—*Discovery Network* and *Edenfield*—make clear that Justice Rehnquist's dicta in *Posadas* is not the law of the land.

Justice Rehnquist's dictum in *Posadas* arguing that the power to ban an activity carries with it plenary power to control truthful commercial speech about it is premised on a faulty assumption. The dictum assumes that, in the area of constitutional rights, the axiom that "the greater power necessarily includes the lesser power" is good law.

But the argument that the "greater" governmental power to ban an activity entirely authorizes the government to place whatever "lesser" conditions it wishes on its exercise, has been rejected in every context in which it has been asserted. See generally, Sullivan, Unconstitutional Conditions, 102 Harv. L. Rev.1415 (1989); Epstein, Unconstitutional Conditions, State Power, and the Limits of Consent, 102 Harv. L. Rev. 4 (1988). The Court has repeatedly recognized that one of the most important functions of a constitution is to constrain the government in placing unconstitutional conditions on the exercise of its so-called discretionary functions.[1]

Thus, when Justice Rehnquist argued that merely because the government could decide whether or not to create certain categories of employment, an employee must "take the bitter with the sweet" and accept a job conditioned on a waiver of procedural due process rights, the Court firmly rejected his position. Compare, *Arnett v. Kennedy*, 416 U.S. 134 (1974) (opinion of Justices Rehnquist, Stewart and Chief Justice Burger) with Id at 167 (opinion of Justices Powell and Blackmun); Id at 185 (opinion of Justice White); Id at 211 (opinion of Justices Marshall, Brennan and Douglas). Indeed, the Chief Justice's "bitter with the sweet" approach was explicitly rejected by eight members of the Court in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

Similarly, when the Chief Justice argued that since the government was under no duty to fund non-commercial television, it could condition funding on a waiver of the ability to broadcast privately funded editorials, the Court explicitly rejected

[1] E.g. *Elrod v. Burns*, 427 U.S. 347 (1976); *Pickering v. Board of Education*, 391 U.S. 563 (1968); *Speiser v. Randall*, 357 U.S. 513 (1958); *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136 (1987); *Thomas v. Review Board*, 450 U.S. 707 (1981); *Sherbert v. Verner*, 374 U.S. 398 (1963); *F.C.C. v. League of Women Voters*, 468 U.S. 221 (1984). For an early statement of the principle, see *Frost v. Railroad Comm'n*, 271 U.S. 583, 593-94 (1926).

his position, holding that the "greater" power did not include the "lesser" power to censor. *F.C.C. v. League of Women Voters*, 468 U.S. 221 (1984).[2]

Thus, the dictum in *Posadas* cannot be cited as a general warrant to control commercial speech. Indeed, were it an accurate statement of the law of the land, the outcomes in both *Discovery Network* and *Edenfield* would be clearly wrong.

CONCLUSION

No disagreement exists about the need to deal effectively with alcohol abuse. But A.N.A. believes that the rote warnings required by S. 674 will not materially alleviate the problem. A comprehensive program of enforcement, treatment and serious education calculated to reach the abusing population would be far preferable to the bureaucratic cosmetic approach of S. 674. In any event, in the absence of a compelling factual justification for the government-mandated speech, A.N.A. believes that S. 674 poses an unacceptable danger to freedom of commercial speech.

The CHAIRMAN. Thank you. Dr. Block.

STATEMENT OF MARTIN P. BLOCK, Ph.D, INTEGRATED MARKETING COMMUNICATIONS

Dr. BLOCK. I am Martin Block, professor of integrated marketing communication at the Medill School of Journalism, Northwestern University. I appear today on behalf of the American Association of Advertising Agencies, the American Advertising Federation, and the Magazine Publishers of America.

As you can see from my written testimony, I have spent the past 20 years studying and publishing research about the effects of advertising and promotion. While I was at Michigan State University, Prof. Charles Atkin and I codirected "The Content and Effects of Alcohol Advertising," which was published in 1981. This study was funded by the Bureau of Alcohol, Tobacco, and Firearms, the Federal Trade Commission, the National Institute on Alcohol Abuse and Alcoholism, and the Department of Transportation.

During the last Congress I became interested in this issue because the predecessor bill, S. 664, like the current S. 674, refers to our study as support for the proposition that a significant relationship exists between the exposure of youth to alcohol advertising and the drinking behavior and attitudes that can lead to certain forms of problem drinking.

This reference distorts the substance of our report and ignores our clear and repeated caveats on interpretation of the data. The bill's reliance on the study does not seem appropriate to me. As discussed in considerable detail in the written testimony, the study provides no justification for restrictions on alcohol advertising. Moreover, the study shows that warning disclaimers on alcohol advertising would be ineffective.

To use this or any study like it to make definitive and wide-ranging social policy is unjustified. There are two other studies cited in S. 674 that correlate advertising and drinking behavior. Neither one directly links alcohol advertising with alcohol abuse and neither of these supports the proposition that health warning messages in advertising will curtail drunk driving or any other drinking behavior. In sum, there are no studies mentioned in the preamble of this legislation that demonstrate that the advertising reg-

[2] *Rust v. Sullivan*, 112 S.Ct. 1759 (1989), even if correctly decided, is not to the contrary, since it dealt with the government's right to decide how its own resources were to be expended. S. 674 attempts to dictate the speech of private actors using their own resources.

ulations in this bill will have any effect on alcohol abuse and drunk driving.

From my review of the scientific literature, I can find no persuasive evidence that advertising causes nondrinkers to start drinking or that advertising causes drinkers to become abusers. In fact, we found in the 1981 study no adverse association between alcohol advertising and knowledge of the dangers of alcohol abuse. For example, we found no statistically significant difference with regard to awareness of the dangers of drinking and driving and other hazardous activities between those who reported seeing more alcohol advertising and those who reported seeing less.

In my opinion, the most important finding of our study concerned the knowledge about alcohol use of the person studied. The vast majority of our subjects were aware of the dangers of excessive drinking, such as drinking and driving or drinking in other hazardous contexts, and that daily drinking of excessive amounts was unhealthy. They also knew that drinking causes many problems in society and that drinking alcohol is no way to solve personal problems.

The study showed the need for more positive education—I should underline that—in how to drink responsibly. It was my belief then, and still is now, that educational programs about alcohol consumption and use are needed. The form these programs should take and the age groups that should be targeted should be the subject of further study, however.

Our study also addressed the issue of warnings, although not exactly in the form described in the proposed legislation. Overall, disclaimer messages that were part of brand advertisements appeared to have very little or no effect. There is no reason to believe that the proposed warnings would be any more effective, since the proposed warnings deal with the risks that are already common knowledge and since warnings have not been shown to be very useful.

In conclusion, I believe that the proposed alcohol advertising warnings are not needed and will not have any positive educational value. People already know about the fundamental risks mentioned in the proposed warnings. What is needed is more detailed education about how and when to consume alcoholic beverages, if they are consumed at all. This is something that no brief warning label can provide. I also believe that the proposed alcohol warnings may very well create new problems and might even aggravate overall consumer risks by desensitizing consumers to warnings generally.

Thank you.

[The prepared statement of Dr. Block follows:]

PREPARED STATEMENT OF DR. MARTIN P. BLOCK

I am currently a Professor in the Integrated Advertising Marketing Communications program in the Medill School of Journalism at Northwestern University. Previously I was a Professor of Advertising and Telecommunications at Michigan State University, where I rose through the academic ranks. I have been department chair at both institutions and have now returned to teaching and research.

Although this testimony presents my professional view on this legislation based on years of academic research in advertising, I have been asked to make this presentation today by the American Association of Advertising Agencies, the American Advertising Federation and the Magazine Publishers of America.

I have spent the last twenty years studying the effects of advertising and promotion. I have been involved in a wide variety of advertising-related projects and have frequently published the results. I have had experience with a number of Federally-funded research projects and was a consultant to the Federal Trade Commission on the proposed Children's Rule in the late 1970s.

In 1979 while I was at Michigan State University, Professor Charles Atkin and I co-directed "The Contents and Effects of Alcohol Advertising" project which was funded by four Federal agencies: BATF, FTC, NIAAA and DOT. The publication date of the study is generally reported as 1981. I was interested in this project because it was an opportunity to study the effects of advertising. The product category to me was incidental. I have no special interest in beer, wine or distilled spirits. I have studied many other product categories.

My interest in submitting testimony to this Subcommittee was triggered when I became aware that the preamble to S. 674 refers to our study as support for the proposition that a "significant relationship" exists between exposure of youth to alcohol advertising and drinking behavior and attitudes that can lead to certain forms of problem drinking. This reference distorts the substance of our report and ignores the caveats we put into the report concerning interpretation of the data.

The preamble's reliance on this study is surprising. As shown in more detail below, with respect to the issue of advertising effects, the study actually provides no justification for restrictions on, or curtailment of, alcohol advertisements. Moreover, the study showed warning disclaimers on alcohol advertising to be ineffective.

It is important to keep in mind the context in which this study was undertaken. The alcohol advertising project that Charles Atkin and I directed was a most ambitious undertaking. It was a very large and complex project, designed and completed in a relatively short period of time, considering its immense scope of inquiry. It required satisfying four Federal agencies, meeting human subject requirements, and scheduling hour-long personal interviews with over 1,200 adults and adolescents in four metropolitan areas across the country.

The purpose of the study, as I understood it, was to broadly attempt to identify any possible influences of advertising on drinking that would be worth subjecting to future, more focused study. Thus, the study was intended to be exploratory; our intent was to generate researchable questions, not provide definitive and conclusive answers. This is a critical point that appears to have been lost in the consideration of the project and its results more than a decade later.

The study itself consisted of three major parts: a summary of alcohol advertising industry spending in 1978, a content analysis of a sample of then-current alcohol advertising messages, and a large survey of both adults and adolescents. Ninety percent of the "adult" group fell in the 18-23 year-old bracket; very few older adults were tested. The sample selected, although quite large, was not a probability or random sample, but rather a quota sample designed to minimize data collection costs.[1]

The largest problem with the project, in my opinion, is that it has at times been vastly over-interpreted. The over-interpretation results from three failures: forgetting that the study was intended to be only exploratory (i.e., for the purpose of suggesting questions for further study, not providing answers), ignoring the fact that the study is a one-shot cross-sectional survey (where it was not possible to control for factors other than advertising that might affect the drinking behavior of persons in the sample), and misunderstanding the nature of correlations (which are not the same as causal relationships).

Because the study was exploratory, a wide net was cast in the form of many and varied questions with the hope of finding anything; breadth was the goal, not depth of probing on any given issue. Certainly any results from the study that show correlations between advertising and drinking would have to be viewed as liberal estimates because of the way the questions were written and asked, using extensive prompting and questions designed to skew answers toward a showing of effects.

Measuring actual exposure to advertising was also very difficult. We never actually observed what ads people saw and whether they paid attention to them. Instead, we had to rely on their own recollections of what they thought they had seen

[1] The project has been frequently criticized because of this so-called convenience sample. This particular criticism fails to take into account the exploratory nature of the project and contemporary research practice, which frequently involves use of mall intercepts, theater tests and focus groups that are not perfectly random samples. It is technically true that the sample is a non-probability sample, but it was not a deliberately-biased sample. Here again, people unfamiliar with the original study proposal fail to understand that we never intended to use a precisely random sample. We were merely focusing on whether or not there appeared to be any correlations at all between advertising and drinking. We were not attempting to extrapolate specific percentage levels on each variable we tried to measure, in order to come up with a precise estimation of the strength of any effects we found with respect to the entire U.S. population.

and how much attention they thought they had paid to them, and we had no way of determining whether their recollections were accurate. Thus, respondents were able to self-select themselves into high and low exposure groups.

We also never actually observed subjects' drinking behavior; instead, we relied on subjects to accurately report on their own typical drinking habits, based on their own past recollections. Thus, they could also self-select themselves into different drinking categories.

Even if these recollections were accurate, it might be that other factors were influencing this selection and are the root influence of their drinking habits, and not exposure to ads. This is sometimes described as the problem of the ad hoc experiment where different groups are compared as they are found. The temptation is to believe that we know what makes the groups different. This is a classic dilemma in analyzing and interpreting cross-sectional survey data.

Exposure to advertising was not a deliberately manipulated variable, that is, one group shown lots of advertising and another similar group shown little advertising. Without this deliberate manipulation and other experimental controls, it is not possible to determine a true causal relationship, or to be able to say in the context of this study that exposure to alcohol advertising causes consumption of alcohol. The relationships described in the study are merely statistical associations or correlations and not experimental results. This is why a lengthy disclaimer statement was added at the very beginning of the report and- repeated throughout, to the effect that causal relationships cannot be determined from this research.

The study did provide a number of interesting findings which I believe certainly are worthy of consideration. Perhaps one of the most obvious findings is that alcohol advertising is an important part of the mass media and is widely varied in its tactical and executed forms. The major finding with respect to possible advertising effects is the uniformly strong association with brand awareness and preference. There seems to be little doubt that advertising is strongly associated with brand competition in the industry. This finding was statistically the strongest association that we found out of all the variables we investigated.

The controversial issue of a statistical linkage between exposure to alcohol advertising and consumption is often associated with the study and deserves more detailed discussion. In the first place, we found a very weak correlation between self-reported alcohol advertising exposure and self-reported consumption. At best our data indicated an association that would share no more than around 7 percent of the variability between exposure and liquor consumption that we measured for this sample, and less than 5 percent of beer consumption. In comparison, the relationship between exposure and brand awareness was much stronger.

It is quite remarkable that this very weak correlation with consumption is now sometimes cited as the reason it is necessary to regulate or curtail advertising. As I said before, the study only indicated a correlation between advertising and consumption for this group, not a causal relationship. Certainly the study does not demonstrate that exposure to alcohol advertising causes consumption of alcohol that would not otherwise occur, because the design of our study doesn't permit anyone to reach that conclusion.

Most importantly, from my review of the scientific literature I can find no persuasive evidence that advertising causes non-drinkers to start drinking, or that advertising causes drinkers to become abusers. In fact, based on the results of our content analysis, if anything the advertisements we studied would reinforce only moderate consumption, because that was virtually all that was portrayed in the ads.

In my opinion, the weak correlation between exposure and consumption partially validates the study, because there should always be at least some degree of relationship with advertising for any product category. The fact that competitive brand effects were far more strongly related to exposure provides additional support, because one would expect to find this. Among established and mature product categories like alcohol, which is an ancient product, advertising is an exceptionally important competitive tool. There is solid evidence that advertising leads to more product innovation and choices, more competitive pricing, and higher quality products because of the competitive atmosphere that advertising helps to create and foster. Certainly advertising can and does stimulate consumption of any particular brand of a product that is viable, but commercially the effects, if any, on overall consumption of the entire mature product category are generally very weak.

The only two associations we found among all the variables we studied that might be considered "strong" were between alcohol advertising and brand awareness, and between adolescent beer drinking and peer influences. While the study does report a number of other associations which we found to be statistically significant, for the most part the magnitude of those associations was rather weak. After controlling for a number of spurious factors that might have been partially responsible for the

associations we identified, the association between alcohol advertising and consumption was at best weak, while the associations of advertising with heavy or problem drinking were slight or negligible. Indeed, the items we used for measuring excessive and problem drinking represented a superficial attempt to measure these variables.

We found no adverse association between alcohol advertising and knowledge of the dangers of alcohol abuse. For example, we found no statistically significant difference with regard to awareness of the dangers of drinking and driving and other hazardous activities between those who reported seeing more alcohol advertising and those who reported seeing less.

We found that the implicit message in the vast majority of alcohol advertisements was moderate drinking. Our conclusion, based on our content analysis of hundreds of alcohol ads, was that only an exceptionally small number of advertisements portrayed the use of alcohol in troublesome ways, such as portrayals of hazardous activities. Portrayals of responsible drinking situations were the rule, not the exception.

We later concluded that, overall, the evidence gleaned from our study was not extraordinary, falling far short of supporting the dire anti-advertising allegations and sensationalist conjecture that had pervaded this issue in recent years. After publication of the study's results, we made it clear that in our judgment, none of the findings was alarmist and none of the conclusions was sensationalistic. We found that subsequent to the study's publication, anti-alcohol groups seemed to have only limited interest in our findings, because our results failed to confirm their expectations.

In my opinion the most important finding of our study concerned the knowledge about alcohol use of the persons studied. The vast majority of our subjects were aware of the dangers of excessive drinking, such as drinking and driving or drinking in other hazardous contexts, and that daily drinking of excessive amounts was unhealthy. They also knew that drinking causes many problems in society and that drinking alcohol is no way to solve personal problems. But the study showed the need for more positive education about how to drink responsibly. It was my belief then, and still is now, that educational programs about alcohol consumption and use are needed. The form these programs should take and the age groups that should be targeted should be the subject of further study. Anything on this front would help, including the programs and advertising that the industry currently employs. They are certainly steps in the right direction.

It is also worth noting that the project did address the issue of warnings, although not exactly in the form described in the proposed legislation. Warnings in the form of moderation disclaimers contained in tag lines at the end of product ads were tested in some of our experiments. The disclaimer messages were studied by showing part of the sample an ad containing the disclaimer, and part of the sample the same ad without any such message. Overall, disclaimer messages that were part of brand advertisements appeared to have very little or no effect. There is no reason to believe that the proposed warnings would be any more effective, since the proposed warnings deal with risks that are already common knowledge[2] and since warnings have not been shown to be very useful generally.

The fact that our alcohol advertising project found little reason to pursue warnings is not very surprising given the historical experience. Warnings have been proposed and tried in a number of product categories. The appearance of the warnings themselves, the official-looking white box, along with the wording "may be hazardous to your health" have become cultural icons and material for comedians. Yet, overwhelmingly, the research has shown warning labels to be ineffective. This is true of research done prior to the institution of the current alcohol container label requirement as well as evaluation research afterwards.

What little research evidence there is to support the idea of warnings comes from controlled forced-exposure experiments, usually done with a very limited sample, such as college students enrolled at a single university and probably taking the same course. A relatively recent example of this type of study is reported by Ducoffe (a former student of mine) in the Journal of Public Policy and Marketing (1990, 9:16-29). Based on a large sample of undergraduate students who watched a videotape with commercials and various audio and video warnings included, she concludes that a majority of the viewers could recall having seen or heard the messages. Audio only and combined audio and video warnings produced better recall than video only warnings.

[2] This is shown by a recent federally-financed study. L. Kaskutas and T. Greenfield, "Knowledge of Warning Labels on Alcoholic Beverage Containers," Proceedings of the Human Factors Society 35th Annual Meeting—1991, p. 441.

This is hardly evidence that warnings would have any effect, but rather only evidence that when college students give a message their full attention they can remember what they have seen or heard for a short period of time. A study like this fails to account for the real advertising and marketing communication environment as well as consumer experience, knowledge and involvement. Much better evidence concerning the effectiveness of warnings should come from field experiments.

A field study concerning alcohol container warning labels, reported in the Journal of Public Policy and Marketing by Scammon, Mayer and Smith (1991, 10:214-228) concludes that the warnings are noticed, but that they do not appear to be influencing perceptions and behaviors. These researchers conclude by arguing that warning labels might actually be counterproductive. One of their arguments is that warning labels do not seem to influence behavior, but might instill an attitude among consumers that everything is dangerous, therefore there is no reason to try to reduce risk.

Based upon my own research, and my review of the research of others, I see no real evidence that different warnings would have any more direct impact on consumers. Moreover, I am confident that the proposed warnings will almost certainly not be effective because they will not increase knowledge about responsible consumption and will not change behavior.

In conclusion, I believe that the proposed alcohol advertising warnings aren't needed and won't have any positive educational value. People already know about the fundamental risks mentioned in the proposed warnings. What is needed is more detailed education about how and when to consume alcoholic beverages, if they are consumed at all. This is something that no brief warning label can provide. I also believe that the proposed alcohol warnings may very well create new problems and might even aggravate overall consumer risks by desensitizing consumers to warnings generally.

The industry itself is in an excellent position to continue and to increase its educational efforts. Legislation should be proposed that would encourage further educational programs, perhaps offering tax incentives. Other educational programs by parents, schools, churches, and other organizations should be encouraged as well. Detailed education is one of the keys to reducing the risks associated with alcohol consumption and abuse, not the warnings proposed in S. 674.

The CHAIRMAN. Thank you, Dr. Block.

Professor Neuborne, we have got that *Central Hudson Gas & Electric Corporation* case up there in your State of New York.

Mr. NEUBORNE. Yes, sir.

The CHAIRMAN. Therein, of course, the Commission in New York was trying to force advertisers to diminish the use of electric power. And Justice Powell, for the Supreme Court in his finding, says that the State of New York violates the first amendment rights because it completely bans promotional advertising by an electric utility.

But it went on to, of course, find that there could be some restrictions on that advertising finding, and I quote:

> The Commission has not demonstrated that its interest in conservation cannot be protected adequately by more limited regulation of Appellant's commercial expression. To further its policy of conservation, the Commission could attempt to restrict the format and content of Central Hudson's advertising. It might, for example, require that the advertisement include information about the relative efficiency and expense of the offered service both under current conditions and for the foreseeable future.

In other words, is that not what this bill intends, to furnish information about the relative effect rather than the efficiency and the disastrous damage to health and life and limb and otherwise? What say you about the *Central Hudson* finding by the Supreme Court?

Mr. NEUBORNE. Well, we have no quarrel with *Central Hudson*. Justice Powell wrote both *Central Hudson* and he wrote the *Pacific Gas & Electric* case. What Justice Powell said in *Central Hudson* was two things. First, that the restriction did not directly advance

the substantial governmental interest and that there were less drastic means of advancing the governmental interest.

One of the less drastic means he suggested would be to require the utilities to inform consumers about things that they were ignorant about. In other words, Justice Powell made the assumption of the precise state of affairs that we think the proponents of S. 674 must establish. They must establish that people really do not know that there is a linkage between excessive use of alcohol and risk.

The CHAIRMAN. Well, I will ask you and Mr. Meister here, we have, as you well know, the Department of Health and Human Services, and they made a finding in October 1991 relative to alcohol use and alcoholic beverages. In fact, it was a study by the Office of Substance Abuse Prevention as part of the Health and Human Services Department. And they found, relating to ignorance, they found that 5.6 million teenagers do not know the legal age for purchasing alcohol is 21, and that 2.6 million teenagers do not know that a person can die from an overdose of alcohol, like one of the previous witnesses attested to that fact with the loss of her child.

What say you about that?

Mr. Meister, you were the one who said they did know.

Mr. MEISTER. The Office of the Inspector General, Department of Health and Human Services, in that report called "Youth and Alcohol: A National Survey," surveyed students in grades 7 through 12 and found that 98 percent—really, an unheard of level knew that "mothers who drink alcohol during pregnancy have a higher risk of having babies with birth defects; 96 percent recognized that alcohol can be addictive and that teens can become alcoholics; 93 percent recognized that drinking can impair coordination and reflexes, and therefore could cause them problems, especially when drinking and driving.

In every other study that I am familiar with, Senator, both public polls as well as Government polls, say that the level of knowledge of these risks is above 90 percent, and yet there are 25 percent of the American population cannot tell us what the purpose of July 4 is. So, I would argue that we have here a level of education that far exceeds virtually any other public issue before this Congress.

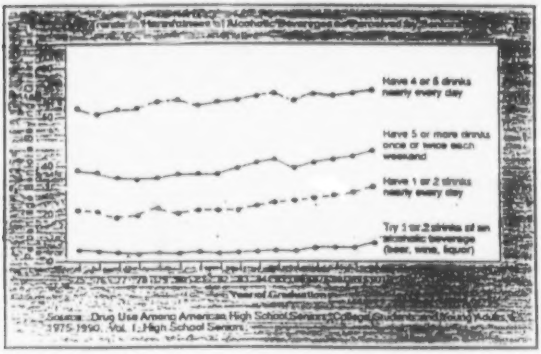
The CHAIRMAN. Well, we will insert in the record at this particular point the finding I referred to. It is entitled "Too Many Young People Drinking Know Too Little About the Consequences," and quotes President George Bush: "We must teach our children that alcohol is a drug."

[The information referred to follows:]

Office for Substance Abuse Prevention October 1991

1991

TOO MANY YOUNG PEOPLE DRINK AND KNOW TOO LITTLE ABOUT THE CONSEQUENCES


Have 4 or 5 drinks nearly every day
Have 5 or more drinks once or twice each weekend
Have 1 or 2 drinks nearly every day
Try 1 or 2 drinks of an alcoholic beverage (beer, wine, liquor)
Year of Graduation
Source: Drug Use Among American High School Seniors, College Students and Young Adults, 1975-1990. Vol. 1, High School Seniors.

"We must teach our children that alcohol is a drug."
—President George Bush, 1989

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Alcohol, Drug Abuse, and Mental Health Administration

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What are the consequences of teen drinking?

- The number one killer of teens and young adults is alcohol-related highway death (National Highway Traffic Safety Administration, 1988).
- Alcohol is the major cause of all fatal and nonfatal crashes involving teen-aged drivers (Centers for Disease Control, *Morbidity and Mortality Weekly Report*, 1990). Nearly eight young people died each day—one every 3 hours—in 1989 in an alcohol-related vehicular crash (Office of the Inspector General Survey, 1991).
- Alcohol use also is associated with homicides, suicides, and drownings—the other three leading causes of death among youth (National Commission on Drug-Free Schools, 1990).
- In 1989, 9% (about 120,000) of State-funded alcohol treatment admissions were clients under the age of 21 (National Association of State Alcohol and Drug Abuse Directors, 1990).
- Among sexually active teens, those who averaged five or more drinks daily were nearly three times less likely to use condoms, thus placing them at greater risk for HIV infection. Among all teens who drink, 16% use condoms less often after drinking (*American Journal of Public Health*, 1990).
- A significant proportion of violent crimes among students—such as date or acquaintance rape, robbery, and assault—has been shown to involve alcohol. A survey of college administrators indicates that more than one-half of campus incidents, which ranged from violent behavior to damage to residence halls and other property, were related directly to alcohol use (National Commission for Drug-Free Schools, 1990).

> *"Drunk driving is one of the most deadly scourges ever to strike modern times and it is as crippling as crack, as random as gang violence, and it's killing more kids than both combined..."*
>
> —President George Bush, 1989

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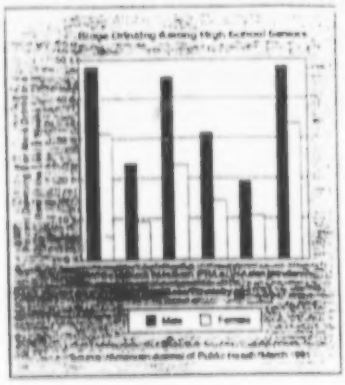
How Many People Binge Drink?

- Among 12- to 17-year-olds who drink, 27% down drinks fast to get an effect, and 28% experience blackouts (National Institute on Drug Abuse, National Household Survey on Drug Abuse, Main Findings 1990).
- About one-third of twelfth-grade students engage in binge drinking at least once every 2 weeks and 4% drink daily (National High School Senior Survey, 1990).
- About 40% of college students engage in binge drinking regularly: 4% of college students, or about 0.5 million, drink every day (National High School Senior Survey, 1990).



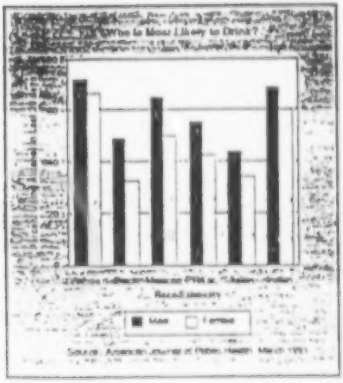
How big is the problem of teen drinking?

- According to a poll conducted by the National Association of Student Councils, alcohol is the leading school problem today. 46% say that alcohol is their school's most serious problem (USA Today, June 21, 1990).
- A 1990 survey of the American public, sponsored by the Center for Science in the Public Interest, found that 91% said teenage drinking is a problem, and 79% agreed that the problem has become worse in the past 5 years. If this is true, 75% said they strongly or somewhat agree that strong advertising is a major contributor to underage drinking (Wall Street Journal, August 21, 1990).
- According to a survey conducted through [illegible] 43% of [illegible] 12- to 17-year-olds [illegible] 1990 [illegible] 1989 [illegible] 1988 [illegible] 1987 [illegible] 1986 [illegible] 1985 [illegible] 1984 [illegible] 1983 [illegible] 1982 [illegible] 1981 [illegible] 1980 [illegible] 1979 [illegible] 1978 [illegible] 1977 [illegible] 1976 [illegible] 1975 [illegible] 1974 [illegible] 1973 [illegible] 1972 [illegible] 1971 [illegible]

out of every ten are regular (at least monthly) users of alcohol (National High School Senior Survey, 1990).

- Over 75% of eighth-grade students have tried alcohol, and 51% of them have tried it by sixth grade. By tenth grade nearly 90% of students report having tried alcohol; of these, 69% report first use by eighth grade (National Adolescent Student Health Survey, 1987).

What are the race/ethnicity and gender differences?



- The highest drinking rates (defined as use in the last 30 days) are among White and American-Indian male and female high school seniors and Mexican-American males. These same groups are among the heaviest drinkers. (*American Journal of Public Health*, 1991).

- Although drinking is less overall among female high school seniors, the use pattern follows that of males by race/ethnicity. In other words, current and heavy alcohol use is higher among White, American-Indian, and Mexican-American females and lower among African-American, Puerto Rican/Latin American, and Asian-American males and females (*American Journal of Public Health*, 1991).

- Nondrinking rates are highest among African-American and Asian-American youth (National Institute on Alcohol Abuse and Alcoholism, *Seventh Special Report to the U.S. Congress on Alcohol and Health*, 1990).

What kind of alcoholic beverages do young people drink?

- Junior / middle and senior high school students drink 33% of all wine coolers sold in the United States (9 million gallons) and 11 billion cans of beer (102 million gallons or 2 percent of the 52 billion bottles / cans of beer sold each year (Office of the Inspector General Survey, 1990).

- Teenagers prefer wine coolers (their drink of choice) because they like the fruity, non-alcoholic taste and [illegible]

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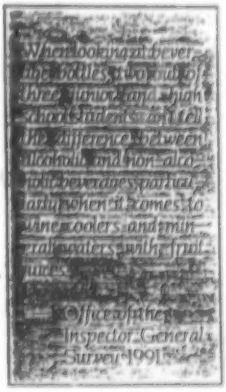
alcohol. They drink more beer, however, because it is cheap and easy to get (Office of the Inspector General Survey, 1991).

How do young people obtain alcoholic beverages?

- Almost 7 million young people who drink (about two-thirds) buy their own alcoholic beverages. Students as young as ages 12 or 13 report buying alcoholic beverages in a store (Office of the Inspector General Survey, 1991).

- Young people get around purchase laws by having older friends buy alcoholic beverages for them, by using fake identifications, and by buying from stores that don't obey minimum purchase laws or that have young clerks (Office of the Inspector General Survey, 1991).

- Teenagers frequently find alcoholic beverages at parties without parental supervision and at friends' homes. Older teenagers who drink usually obtain alcohol from their friends, whereas younger ones get it from their parents (Office of the Inspector General Survey, 1991).


When looking at beverage bottles, two out of three junior high students can't tell the difference between alcoholic and non-alcoholic beverages, particularly when it comes to wine coolers and mineral waters with fruit juices.
Office of the Inspector General's Survey, 1991

Do young people have trouble buying alcoholic beverages?

- According to a recent study, 19- and 20-year-olds who tried to buy beer in Washington, D.C., were successful in 97 out of 100 attempts. Earlier research in Westchester, New York, had similar results. Nineteen- and 20-year-olds bought beer successfully 80% of the times they tried. These youths rarely were asked for identification to verify that they were age 21 (Insurance Institute for Highway Safety, 1991).

What misconceptions do young people have about alcoholic beverages?

- Minimum purchase age. 16 million teenagers don't know that the minimum legal age for purchasing alcohol is age 21 in every State; even worse, 2 million don't even know that such a law exists (Office of the Inspector General Survey, 1991).

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...getting them all out, sober you up. (Office of the Inspector General Survey, 1991).

• Relative strength/equivalencies. 80% of teenagers don't know that a can of beer has the same amount of alcohol as a shot of whiskey or a glass of wine and 59% don't know that a 5-ounce glass of wine and a 12-ounce can of beer have the same amount of alcohol. Almost one-half mistakenly believe that a can of beer contains more alcohol than a shot of whiskey or a glass of wine (Office of the Inspector General Survey, 1991).

Why do young people drink alcoholic beverages?

According to the Office of the Inspector General's 1991 survey, many teenagers drink to handle stress or to change the way they feel:

31% drink alone (among bingers, 39%)
41% drink when they are upset (among binge
77% drink because they are bored (among binge
25% drink to feel high (among bingers, 37%)

Are young users of alcohol more likely to use other drugs?

• Young people who start using alcohol within the critical 9- to 15-year-old age period have a higher tendency to be current users of alcohol, cigarettes, or marijuana than do those who start drinking when they are older (Yu and Williford, 1990).

• The majority of young people who use illegal drugs first used alcohol. And, they continue using alcohol along with regular use of other drugs. As a result, these young people have higher-than-average rate of alcohol-related injury and death (National Commission on Drug-Free Schools, p. 84).

...should be part of the curriculum in every school district and [illegible] ...(Office of the Inspector General Survey, 1991).

The CHAIRMAN. Mr. Becker, you are good. You come all the way around and say you have got to hurry up and start advertising, because if you do not, it will become more of a forbidden fruit. Were you serious about that?

Mr. BECKER. Yes, Senator, we are. We believe, and we believe that there is some good research that suggests, when young people are given a challenge, they are oftentimes willing to accept that

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challenge, and in fact, often exceed it. We do believe that a negative outcome of this legislation could be to increase the likelihood that young people would see alcohol use, such opportunity to abuse it, in even greater quantities.

The CHAIRMAN. Well, let me talk to my friend, Mr. Fritts, because he and I worked together on broadcasting. But it is not your contention that we give you a free spectrum—your Government does—for the National Association of Broadcasters. I have tried to put in, as you well know, a spectrum fee, but I got defeated here at the committee level. I tried to charge you for that, but you beat me. But, in addition to giving you a free spectrum, you think that we ought to also ensure your income with beer and wine ads or you say you are going to go broke if the beer and wine ads come off, that you would lose millions.

How is it that you did not lose millions when the hard liquor advertising came off?

Mr. FRITTS. Senator, point 1, hard liquor has never been advertised on radio and television by virtue of the hard liquor industry's own code.

The CHAIRMAN. Why do they have that code?

Mr. FRITTS. I think Mr. Meister can speak to that.

Mr. MEISTER. First, Senator, may we correct the record and stop using the phrase "hard liquor." We are no more hard than any other beverage alcohol. We are all beverage alcohol.

The CHAIRMAN. Well, why would then that liquor that has restricted itself, why did they do that?

Mr. MEISTER. After prohibition, we simply made the decision, when we instituted the first code of good practice for self-regulation, that we would not advertise in a number of ways. And when television and radio came on, we made an affirmative decision that we would not use those medias for our purposes of advertising.

The fact that we do not use them, however, does not lessen our concern about this bill or the support that we have for wine and beer to be able to advertise their products in the way they choose to do so responsibly.

The CHAIRMAN. You say all liquor is relatively the same, whether hard or soft?

Mr. MEISTER. All alcohol, Senator.

The CHAIRMAN. Or all alcohol. And what you have is a Code of Good Practice, then why should it not, as Senator Thurmond's bill contains a code of good practice, apply there and not just voluntarily, just follow the lead of the other alcoholic beverages that have restricted themselves under a code of good conduct?

Mr. MEISTER. We all are a legal product that is used by 100 million people in this United States responsibly. To require us to undertake these warnings as part of our advertisements not only runs into the first amendment problems that Professor Neuborne spoke about, but really is discriminatory and punitive treatment to our industry when the facts of alcohol abuse are well known by most of the consumers and most of the individuals in society.

There simply is not a basis to do that. So I think the question should be on the other side: Why should we be asked to do this when it is not going to deal with the problems? I would much rather we were here today talking about how we strengthen education

programs in the school systems, how we toughen drunk driving laws in various States, why we do not have administrative license revocation, which we are willing to lobby for, in more States. There are a whole host of things that we can do that will be effective to reduce the problems of alcohol abuse that we are all concerned about, but not in this area.

The CHAIRMAN. Mr. Fritts, you attested to the fact that you sympathize with the problem and wanted to help Senator Thurmond and those who are sponsoring this particular measure. They are just off on the wrong track or course; you would be willing to work with alternative approaches. I think that was your expression. What is the alternative approach?

Mr. FRITTS. Senator, we have not defined those specifically yet. We have met with a number of members of the committee, including Senator Thurmond, to discuss the idea of looking at a more comprehensive approach, and one that would be less punitive in this particular area, but hopefully more effective toward dealing not only with the issue of drunk driving, but the larger issue of alcohol abuse.

Mr. Chairman, I cannot let the opportunity pass without commenting on your earlier statement about use of the spectrum. Broadcasters are licensed for a period of time, as you well know, to operate in the public interest. If we do not operate in the public interest, we lose that spectrum. A large part of our public interest programming has been focused on alcohol abuse programs and drug abuse programs. And we are very proud of that record. I think that we have distinguished ourselves in that area.

The fact is that somewhere between $800 million and $1 billion in beer and wine advertising flows into radio and television during the course of a year. Currently, 59 percent of the radio stations are losing money; 35 to 40 percent of the television stations are losing money; many of the smaller radio stations are at the margin now. If they lose 2 to 3 percent more revenue, that hurts them to the point that those programs will in fact diminish.

If in fact those messages which we saw earlier, with announcements, were to leave the air entirely, then we are concerned that the public information side of this would actually decrease, rather than increase—first, from the lack of wherewithal by the stations to support campaigns of this nature and, second, from the area of sports programming.

The CHAIRMAN. Is it your contention that advertising does not promote consumption?

Mr. FRITTS. Well, it is interesting that the Beer Institute has pointed out that its members have spent an increasing amount of advertising on radio and television while their consumption has been going down slightly. And obviously there is a battle, if you will, among the beer companies in terms of promoting not consumption but more brand usage among themselves. And I think that is borne out by the fact that even though advertising is up, total consumption is trending downward.

The CHAIRMAN. But you have acknowledged then the public interest, because, as you say, you are only licensed in conformance with the public interest. You do not think that the public has an interest with respect to restricting the use of alcohol?

Mr. FRITTS. Absolutely. And I think what we have done is demonstrated on virtually every radio and television station in the United States and exhibited a number of programs dealing with this issue. We are just saying this particular approach, to tie a warning label to an advertisement, is not the most effective approach and in fact could be counterproductive.

Senator, you have just experienced another political campaign. I equate that with having the Government require for all political advertisements to have a tag on it, which might say on a rotating basis, "warning, a vote for this person might increase the Federal deficit." I can suspect that not many members of Congress would want to run advertisements like that, and would probably do like the beer people have said—"we are just absolutely not going to do that. There is a better approach to it."

The CHAIRMAN. Well, heavens above, that is exactly what my opponent advertised about 2 million dollars' worth. [Laughter.]

I do not know where you were.

Senator Danforth.

Senator DANFORTH. Mr. Chairman, thank you very much.

Dr. Block, you mentioned in your testimony that while you do not think the disclosure statements in advertising would be helpful, you do think that educational programs would be. And then you said that, as far as you knew, there had not been any study of what kinds of educational programs would be the most effective.

Do you think that the kinds of ads which are dedicated to, say, drunk driving, either public service ads by the broadcasters or the Ad Council, or those that are run by the beer industry constitute educational programming are effective?

Dr. BLOCK. I think I would respond barely. What you can communicate in a 30-second television commercial is very, very limited, and I think that might be some source of confusion here. It is difficult to educate people in 30-second advertising messages. These issues are more complicated than that. More information is needed than what I can get across in a brief tag line or slogan.

Senator DANFORTH. Do you think maybe a minute would do it? I mean, maybe we could have one-half hour programs, but it would probably be not that many of them available. Would a minute constitute sufficient time, do you think, to convey information with respect to, say, fetal alcohol syndrome?

Dr. BLOCK. It would be a move in the right direction, but I do not think a minute would be long enough either. And then you run into a problem of holding attention, which is the classic problem of the advertiser.

Senator DANFORTH. You said in your testimony that you really had not studied it, but do you have advice for us as to what length and kind of programming would be helpful?

Dr. BLOCK. I think I would probably argue for programs outside of the media, using the media perhaps to support them. But I would argue for programs through schools, other events, et cetera.

Senator DANFORTH. But we are here to talk about the media, and that is where we have jurisdiction. Would it be your view that a public service ad or a half-minute ad, while not great from your standpoint, would be preferable to the tag line kind of approach?

Dr. BLOCK. Yes.

Senator DANFORTH. Now, Mr. Fritts, public service ads are provided by the broadcasters and by the Ad Council; is that correct?

Mr. FRITTS. Senator Danforth, we are involved in a variety of public service activities. They involve not only public service announcements, but they involve programs, they involve documentaries, they involve public affairs programs on a variety of subjects, Fetal Alcohol Syndrome, and they are done all across the country.

One of the most outstanding is our Operation Prom/Graduation. I was visiting with a broadcaster from a midsized city in the Midwest just yesterday, and he said that through Operation Prom/Graduation, they organize 64 high schools around this television station—64 high schools to participate in a drug and alcohol free graduation ceremony. And that is the type of outreach activity that go far beyond just running PSA's. I think that is what Dr. Block may be referring to—not only education by the local broadcaster, but by the community groups as well.

Senator DANFORTH. We do not have enough time in this question and answer for me to elicit from you the various things that are being done by the broadcasters now. But it was your testimony that if this legislation passed, that would terminate. Why is that?

Mr. FRITTS. What I am saying is that a lot of the wherewithal that we have, the financial underpinnings that enable us to do these type programs would dissipate. There are, as you well know, any number of good causes which broadcasters can serve their community with. Currently, they have been involved in alcohol abuse and many other programs of relevance to their local community. When I said it would dissipate, I did not mean that it would absolutely disappear. But I am saying that I think that there would certainly be less importance placed on this particular type of programming.

Senator DANFORTH. Mr. Becker, with respect to the beer industry, it now runs ads, does it not, that warn people about drunk driving and other abuses of alcohol?

Mr. BECKER. That is correct, Senator.

Senator DANFORTH. What would be the effect of this legislation on that advertising?

Mr. BECKER. We believe if this legislation was passed, that you would no longer see beer advertising of any sort on either television or radio.

Senator DANFORTH. Including that advertising which is designed to warn people.

Mr. BECKER. That is correct, Senator.

Senator DANFORTH. Now, could Mr. Fritts and Mr. Becker provide us for the record information as to the kind of advertising that is now done that does warn people and the frequency of that advertising, the quantity of advertising?

Mr. FRITTS. Senator Danforth, we would be glad to. As you know, we have provided this committee with voluminous materials in times past, and we will be very pleased to—we have a library full of it and we will be glad to provide as much as you want.

Senator DANFORTH. I do not think we need a library, but if you could put it in digestible form. And could you also, Mr. Becker?

Mr. BECKER. Yes, Senator we will.

[The information referred to follows:]

Broadcasters Respond to Responsible Use of Alcohol Issues

	PSAs	Public affairs programs	Community projects	Editorials	News segments	All vehicles
Television (n=78)						
Alcohol abuse	70	46	27	7	59	76
	89.7%	59.0%	34.6%	9.0%	75.6%	97.4%
Drunk driving	76	47	30	11	66	78
	97.4%	60.3%	38.5%	14.1%	84.6%	100.0%
Underage drinking	67	46	34	5	58	72
	85.9%	59.0%	43.6%	6.4%	74.4%	92.3%
All issues	78	57	45	14	66	
	100.0%	73.1%	57.7%	17.9%	84.6%	
Radio (n=138)						
Alcohol abuse	121	103	42	11	87	133
	87.7%	74.6%	30.4%	8.0%	63.0%	96.4%
Drunk driving	132	94	43	15	99	137
	95.7%	68.1%	31.2%	10.9%	71.7%	99.3%
Underage drinking	114	83	40	12	88	131
	82.6%	60.1%	29.0%	8.7%	63.8%	94.9%
All issues	135	115	63	20	102	
	97.8%	83.3%	45.7%	14.5%	73.9%	
Broadcasters (n=216)						
Alcohol abuse	191	149	69	18	146	209
	88.4%	69.0%	31.9%	8.3%	67.6%	96.8%
Drunk driving	208	141	73	26	165	215
	96.3%	65.3%	33.8%	12.0%	76.4%	99.5%
Underage drinking	181	129	74	17	146	203
	83.8%	59.7%	34.3%	7.9%	67.6%	94.0%
All issues	213	172	108	34	168	
	98.6%	79.6%	50.0%	15.7%	77.8%	

Source: NAB Survey of Member Stations, May 10-12, 1993

Senator DANFORTH. I just have a few more, if I could, Mr. Chairman.

As a general principle, can it be determined the frequency of viewership watching a particular program or a particular commercial on television?

Mr. FRITTS. Certainly the programs have a rating service that does provide that information after the fact.

Senator DANFORTH. And you can determine with respect to advertising, can you not, how many times the average person would see a particular message in a period of a week?

Mr. FRITTS. I believe that can be ascertained. However, at one point during a Super Bowl they were gauging the number of viewers by the number of toilets which flushed during commercials or during the half time. So, I think we can provide some information.

Senator DANFORTH. I do not want you to provide it. I am just asking you, as a matter of general information, whether advertisers make those kinds of studies and when they buy advertising, they buy by gross rating points?

Mr. FRITTS. Clearly, they do, that is correct.

Senator DANFORTH. And what they are buying in gross rating points is the volume or the number of times that the particular message is going to reach the average viewer in a period of a week, or some such time period. Am I right?

Mr. FRITTS. That is true.

The CHAIRMAN. Do you want to yield to Larry? We have got a rollcall.

Senator DANFORTH. Oh, do we.

The CHAIRMAN. Yes.

Senator DANFORTH. Can I just make one more—just one brief statement.

The CHAIRMAN. Sure.

Senator DANFORTH. There is—Mr. Fritts, this is unrelated but you are here and I wanted to state it to you. There is a radio station in St. Louis called WKBQ–FM that has been running programming that refers to jews as kikes and blacks as niggers. I am told that the people who have done this have been suspended.

Now, you are here as a representative of that industry which is supposed to be a public service industry. I just wanted to express to you my total contempt and disgust for that radio station and that kind of programming. I think it has no place in this country, and apparently there is nothing the law can do about it. But I would hope the industry itself would weigh in on this matter.

Mr. FRITTS. Senator Danforth, I was unaware of that until your office made us aware of it late yesterday. I share that contempt, on behalf of the broadcast industry. We are looking into it and will have conversations with the station to ascertain the facts. If, in fact, those people who have been saying that have been suspended, I am pleased to hear that.

The CHAIRMAN. We have a vote coming on here on the Metzenbaum amendment to the RTC bill, and I wanted to yield to Senator Pressler to make sure he gets his questions in before those five bells.

Senator PRESSLER. Well, I shall be very brief. I will just throw my questions out there to anybody in the room who has testified earlier.

There is a book that was sent to each Senator, by, I think, someone in the alcohol industry, about the health benefits of alcohol. And we have sort of two cultures clashing. I suppose young people reading these things wonder—I think there was one study that showed that two or three drinks per day lowers some people's cholesterol. These are scientific studies, I guess. That sounds like it is almost a level of intoxication if taken on an empty stomach.

But is it, indeed, a fact that we have a clash? I suppose young people reading this would be caught totally off guard, so maybe these warnings are even more important. But anybody may comment on that. Perhaps some of the people from the previous panel may wish to respond as well.

A second question is whether there should not be different approaches for different industries. For example, the advertising industry has made it clear to me that they do not oppose the philosophy of this bill, but they are of the opinion that a shorter warning on billboards is more readable, and that alcohol warnings on billboards might be of a similar scope and scale to those used for tobacco advertising. That is something I would appreciate people's comments on.

So, I put those two questions out, but I would also address them to the earlier panel, which we will do in writing if anybody wants to comment.

Dr. CHAVITZ. Senator, if I may, I was the founding director of the National Institute on Alcohol Abuse and Alcoholism, and I have been in the field for 40 years. And the first report of alcohol and health to the Congress issued in 1972 was revealing of studies then that showed that the moderate use of alcohol was related to a significant lowering of the incidence of heart disease, the greatest killer in the United States. It was also correlated with longevity.

The issue that you are alluding to is the fact that we have become involved in catechisms of belief instead of science. It is the third time in the history of our country we have behaved this way. When I came to Washington to start the Federal program, I wanted to shift the focus to people who were sick and not have them treated in a punishing way. And every time this country has gotten concerned with alcohol abuse, it has shifted its focus to the substance and forgot about the people.

Young people and old people in this country are not Pavlovian dogs who see an ad and then go out and drink and carry on. They also respond to warning labels. The study that was quoted earlier, that was funded by NIAAA, showed that warning labels did not increase knowledge and change behavior. In a very carefully carried out study funded not by the alcohol industry, not by NAB, but by the National Institute on Alcohol Abuse and Alcoholism.

If I may, sir, there is one addiction that I would like to point out in this country, and that is the addiction toward looking for simple solutions for complex problems. I feel very good being before you, because when I was in Government the Senate supported everything I did, including Senator Thurmond. They were there. But I opposed him back then on warning labels, as I do today.

The CHAIRMAN. Well, I have an addiction for those five bells. I am going to thank this panel and yield to my colleague.

Senator PRESSLER. I am all finished.

The CHAIRMAN. Well, we thank you very very much. The record will stay open for further questions.

We do appreciate your presentations.

[Whereupon, at 12:30 p.m., the hearing adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR PRESSLER

Mr. Chairman, thank you for holding this hearing today on S. 674, the Sensible Advertising and Family Education Act. Clearly, alcohol abuse is destroying lives and costing society billions of dollars. This is an undisputed fact. However, the best method of treating and preventing alcohol abuse is less defined. In short, that is what this hearing is about. Specifically, will mandating warnings of alcohol advertising prevent alcohol abuse?

An estimated 20 million Americans suffer from alcohol related disorders. An estimated 100,000 individuals will die in the United States this year because of an alcohol related illness or accident. This year, Americans will spend $100 billion in alcohol treatment programs, treatment for alcohol related illnesses, alcohol related accidents and lost wages.

Nearly 50 percent of the prison population is chemically dependent at the time of incarceration. Alcohol is one of the most common reasons cited for divorce. Simply put, alcohol abuse increases crime, increases divorce rates, increases juvenile delinquency, and creates many health problems—it is a lethal acid that eats away at the foundations of American society. Alcohol abuse affects all ages and all colors. Ten million American students drink. Of these young drinkers, half a million binge at least once a week. Junior and senior high school students drink 35 percent of all wine coolers sold in the United States and 1.1 billion cans or bottles of beer each year.

This problem hits home in my state of South Dakota. Nearly 10 percent of the South Dakota population is Native American. For many reasons, the rate of alcohol abuse is considerably higher in this population.

Compared with the population as a whole, Native Americans suffer from about five times the rate of alcohol-related accidental deaths, double the rate of alcohol-related homicidal deaths, nearly double the rate of suicides, and up to twenty times the rate of Fetal Alcohol Syndrome.

Millions of Americans enter treatment programs each year. Unfortunately, more than 20 percent of these individuals relapse at some point. The question I ask is—what can we best do to prevent and cure alcoholism?

Some argue that we need to outlaw the sale of all alcoholic beverages. Others contend that alcohol abuse is a genetic disorder and genetic research will lead to a cure. Others argue that improving the living conditions and educational standards of individuals will reduce the rate of alcohol abuse. Still others contend that requiring warning labels and restricting advertising will prevent alcoholism.

Frankly, I do not know the answer. If any of us did have an answer, we wouldn't need this hearing today. Alcohol abuse is a problem that has in some degree affected each of us. I am hear today to listen and learn. My goal is to find a way to reduce the human tragedy of alcohol abuse.

PREPARED STATEMENT OF SENATOR BREAUX

I want to address the committee today regarding a few concerns I have about S. 674, introduced by my colleagues, Senators Strom Thurmond of South Carolina and Paul Simon of Illinois.

My concerns are related to the proposed warnings on promotional displays, specifically on billboards. The leadership of the outdoor advertising industry has made it clear to me that they do not oppose the philosophy of S. 674. Furthermore, the outdoor advertising industry, while seeking relief, does so without prejudice to the interests of other affected parties.

I would like to make a few observations concerning the bill. First, the proposed act makes distinctions based on the types of advertising media that are being considered for warnings. The bill is well conceived in distinguishing various types of

media, but the distinctions need to be more carefully drawn as it relates to billboards. For warnings on billboards to be readable and effective, the warnings must be short, given the fact that billboards are read in a matter of seconds, while driving in your automobile.

Second, because billboards are a standardized size throughout the United States, the Congress must set standards of "conspicuous and prominent" rather than leave the standards to any agency. This is exactly what the Congress did in the early 1980's in the development of tobacco warning legislation, P.L. 98-474. With this precedent having been set, it makes imminent sense for this Congress to follow this time tested approach. In the enactment of tobacco warning legislation, the Congress recognized that warnings on billboards needed to be scaled down in order to be readable and effective. The same holds true for the warnings under consideration today.

The number of words, the size, and the placement of tobacco health warnings on billboards have worked effectively for nearly 10 years. The tobacco warnings on billboards are direct, concise, and to the point. Alcohol warnings on billboards should be of a similar scope and scale to those used for tobacco advertising.

Finally, some consideration needs to be given to the inevitable patchwork quilt of State laws and regulations regarding alcohol warnings. A State has the authority, obviously, to regulate advertising within the confines of applicable State and Federal laws, but if a State allows alcoholic beverage advertising, then any warnings pursuant to State law should be identical to those in this act.

PREPARED STATEMENT OF ROBERT S. PECK, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Thank you for this opportunity to submit testimony for the record on behalf of the American Civil Liberties Union concerning S. 674, the Sensible Advertising and Family Education Act. My name is Robert S. Peck, and I serve as a legislative counsel for the ACLU. The American Civil Liberties Union is a nationwide, nonpartisan organization of nearly 300,000 members dedicated to defending the principles of liberty and equality embodied in the Constitution and, most particularly, in the Bill of Rights. Throughout its 70-year history, the ACLU has been particularly concerned with any abridgement of the freedoms guaranteed by the First Amendment.

The ACLU opposes S. 674 as an infringement of the First Amendment's guarantee of freedom of speech. Although, in our view, all government warning messages do not violate free speech principles, we believe that the requirements of this legislation contravene the limited authority that the government has to regulate commercial speech in the interests of health and safety. That authority is exceeded in S. 674 by (1) the lack of substantial findings that the required labels will achieve the educational and warning goals that the bill seeks to accomplish and that are otherwise not being met; (2) the requirement of warnings that promote law enforcement goals but have no health or safety nexus; (3) the misleading and discriminatory warning that is aimed at pregnant women without also warning that abuse of alcohol by men can lead to reproductive problems; and (4) the lack of standards that would assure that the warnings do not unreasonably appropriate to the government the purchased advertising time of alcohol manufacturers and distributors.

I. COMMERCIAL SPEECH IS ENTITLED TO SUBSTANTIAL FIRST AMENDMENT PROTECTION

As you know, the First Amendment generally stands as a bar against both government censorship as well as governmentally imposed burdens on speech. In other words, the government may neither suppress speech nor add burdensome requirements to the exercise of free speech. Speech is not free when the speaker is required to add to his or her remarks some sort of warning the essence of which is that "the government disagrees with my message." This surely is an abridgement of freedom of speech and amounts to what the courts have called "compelled speech."

It is important to understand at the outset that the Supreme Court has recognized that the First Amendment's protections include "both the right to speak freely and the right to refrain from speaking at all." *Wooley* v. *Maynard*, 430 U.S. 705, 714 (1977). Justice Lewis Powell elaborated on these rights by noting that it is a "fundamental principle that the coerced publication of particular views, as much as their suppression, violates the freedom of speech." *Herbert* v. *Lando*, 441 U.S. 153, 178, n. 1 (1979) (Powell, J., concurring). See also, *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626, 650 (1985). The protections afforded by the First Amendment encompass "the decision of both what to say and what not to say." *Riley* v. *National Federation of the Blind*, 487 U.S. 781, 797 (1988).

This, of course, is not the end of the inquiry, because commercial speech does not enjoy the full degree of protection afforded by the First Amendment that non-com-

mercial speech receives. Nevertheless, the amount of protection that remains is substantial as the Court has indicated again in several cases this term. See, *Cincinnati* v. *Discovery Network Inc.*, 61 U.S.L.W. 4272 (Mar. 24, 1993) and *Edenfield* v. *Fane*, 61 U.S.L.W. 4431 (Apr. 26, 1993). The constitutional test is not based on whether the information conveyed as part of a sales pitch is regarded by some as harmful or beneficial. If the advertising is truthful and concerns a legal product, it constitutes the communication of ideas that have value to society and may well contribute to public debate in a variety of important ways.

As a matter of fact, the Supreme Court has recognized that contribution when it declared that a consumer's interest in the free flow of commercial information "may be as keen, if not keener by far, than his interest in the day's most urgent political debate." *Virginia State Board of Pharmacy* v. *Virginia Citizen's Consumer Council*, 425 U.S. 748, 763 (1976). Obviously, this Committee's concern with alcoholism, its costs to society, and what should be done about it are appropriate matters of intense public interest. The commercial marketplace clearly has a role in that debate.

Still, the government's interest in reducing consumption of what remains a legal product does not give it a right to interfere with a producer's or retailer's speech about the product. If government had that authority, laws could be passed to constrain one side's speech in order to promote the "official view" in the public debate over alcohol. However, the First Amendment does not permit that result because:

> the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources,'" and "'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *Buckley* v. *Valeo*, 424 U.S. 1, 49 (1976) (quoting *New York Times* v. *Sullivan*, 376 U.S. 254, 266, 269 (1964) (quoting *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945), and *Roth* v. *United States*, 354 U.S. 476, 484 (1957)).

The Court has also rejected the notion that compelled access of the kind proposed by S. 674 constitutes an enhancement of speech rights by guaranteeing exposure to a wider variety of views. In ruling that the state could not require a privately owned utility to include a consumer group's messages in its billing envelope, the Court said that the government has no authority "to use [the utility's] property as a vehicle for spreading a message with which it disagrees." *Pacific Gas & Electric Co.* v. *Public Utilities Commission*, 475 U.S. 1, 17 (1986).

Nevertheless, the courts have recognized a narrow range of governmental regulatory authority where the legislature has reasonably found that a product carries probable dangers to health and safety. The ACLU agrees with that proposition. It should, however, also be recognized that this authority is not absolute and that there are limits to what the government may require. We conclude that S. 674 exceeds those limits.

II. THE PROPOSAL MUST BE EVALUATED UNDER THE CENTRAL HUDSON TEST

The judicial test for whether commercial speech regulations exceed constitutional limitations was enunciated in *Central Hudson Gas & Electric Corp.* v. *Public Service Commission*, 447 U.S. 557 (1980). The four-prong *Central Hudson* test requires that: (1) the commercial speech be lawful and not misleading to qualify for First Amendment protection; (2) the asserted governmental interest be substantial; (3) the regulation directly advance the asserted interest; and (4) the regulation not be more extensive than necessary to serve that interest. Id. at 566. This last requirement has been interpreted by the Court to require a reasonable fit between the regulation and the asserted interest. *Board of Trustees* v. *Fox*, 492 U.S. 469, 480 (1989).

There can be no dispute that alcohol advertising promotes a lawful product and is not misleading. To be misleading in a manner that could be remedied by the proposed warning labels, the advertisements would have to assert a health benefit that the labels were designed to combat. This is not the case, and thus the first prong of *Central Hudson* is met, enabling the advertising to qualify for First Amendment protection.

There can also be no dispute that the governmental interest in the public health and safety effects of alcohol abuse is substantial. The abusive use of alcohol exacts a tremendous toll on the abusers, their families, and society generally. Thus, the remaining questions are crucial: 1) Do the warning labels directly advance this public health and safety interest; and 2) is there a reasonable fit between a narrowly tailored remedy and the government's legitimate interest?

III. THE LEGISLATIVE FINDINGS DO NOT ESTABLISH THE NECESSARY NEXUS BETWEEN WARNING LABELS ON ADVERTISING AND THE PREVENTION OF ALCOHOL ABUSE BY THOSE WHO DO NOT HAVE SUFFICIENT INFORMATION

Having established the applicability of the First Amendment and the existence of a substantial government interest, it is then incumbent on this Committee to establish as well that the mandated warnings directly advance the government's interests. We note that the bill's legislative findings do not recite any data or evidence that establishes that health warning messages on alcohol advertising will discourage alcohol abuse. Instead, the findings merely recite the scope of the alcohol abuse problem and that such warnings were recommended by the 1988 Surgeon General's Workshop, the National Commission on Drug-Free Schools in 1990, as well as is favored by substantial majorities in 1989 Wall Street Journal and 1990 Gallup public opinion polls.

These recommendations and opinions are no substitute for research findings that would provide the constitutionally mandated prerequisite to justify the legislation's warnings. The conclusions of government study groups or of a poll do not constitute grounds for abdicating constitutional responsibility. Indeed, the commission's alternative recommendation of a ban on advertising that glamorizes alcohol use flies in the face of the First Amendment and indicates that the Commission did not consider the constitutionality of its proposals. Unless Congress can establish that the forms of advertising warnings required by this legislation directly advance the goal of preventing alcohol abuse, this legislation cannot withstand constitutional scrutiny.

The ACLU has not studied whatever evidence may exist, but we urge the Committee to examine the data with considerable care. Before the third prong of *Central Hudson* is met a number of questions must be answered in a manner that suggests the need for these warnings. Though the following is not a comprehensive list, we suggest that the obvious questions for the Committee inquiry include:

- Have the existing warnings on alcohol packaging had any impact? If so, has it succeeded in educating the target audiences to dangers that they were otherwise unaware of?
- How effective are existing alcohol awareness programs? Do they still leave an awareness gap for consumers who need health and safety information about alcohol abuse?
- Can more be done through the nation's schools, medical personnel, family planning clinics, and public service programs?
- Even with all of these alternative programs operating at full effectiveness, would additional warnings be beneficial?
- Are the words chosen and the manner of delivery required by this legislation likely to educate additional consumers who need information but may be unaware of that need?
- Will the requirements for advertising warning labels detract from the effectiveness of existing efforts to educate the public about alcohol abuse?
- Are the harms that the warnings are designed to address properly explained to the consuming public?

We submit that the hearings last April did not address these critical questions. They must be examined if this Committee can properly conclude that the warnings required by this legislation are justified by real, rather than hypothetical, needs and that it directly advances the government's legitimate interests.

IV. THE WARNINGS DIRECTED AT INFORMING CONSUMERS ABOUT THE LAW DO NOT ADVANCE LEGITIMATE HEALTH AND SAFETY CONCERNS

Two of the warnings required by S. 674 do not fall within the category of health and safety concerns that can properly be addressed through advertising restrictions. The first warns that it is illegal to purchase alcoholic beverages if you are under the age of 21. The second states that a drunk driver could lose his or her driver's license. Because the advertisements do not advocate illegal activity, these warnings simply appropriate a portion of a private advertiser's time to the government. Informing people of what the law requires does not constitute the kind of legitimate state interest that would permit this type of intrusion on the advertiser's speech. Instead, it amounts to a violation of the First Amendment principles enunciated by the Court in the *Pacific Gas* case and a taking of property in violation of the Fifth Amendment.

The interest that the government can legitimately advance with respect to alcohol advertising is the prevention of alcohol abuse. Informing the public of the penalties that violations of the law entail does not directly advance this substantial interest. The irrelevance of these warnings to those purposes is highlighted by their denomination as "Surgeon General's Warnings" since they are well outside the responsibil-

ity and special expertise of that office. These laws punish illegal acts—illegal purchase or reckless driving, not alcoholism, which could not be made a criminal offense. Thus, such warnings cannot be required. Whatever interest the government has in making certain that the public knows the law cannot justify such an imposition on the advertiser of a legal product. Instead, the law generally presumes that products are only going to be used for their legal and intended use. See Restatement, Second, Torts §402A, Comment j. Any other assumption would open all advertising to becoming a billboard for potential criminal acts that might involve the advertised product and thus effectively take away whatever constitutional protection commercial speech enjoys.

V. THE WARNING AGAINST POSSIBLE BIRTH DEFECTS IS MISLEADING AND DISCRIMINATORY

Earlier in this testimony, the ACLU suggested that the Committee should examine whether the harms the warnings are designed to address are properly explained to the consuming public. The ACLU believes that the warning aimed at preventing new-born mental retardation and alcohol-related birth defects may not meet this test because it fails to address the well-documented effects of paternal alcohol consumption on reproductive outcomes.[1] By singling out pregnant women for warnings while not their partners, the warnings are actually misleading as well as discriminatory. We submit that a more accurate and constitutionally acceptable warning would be gender-neutral.

VI. THE LEGISLATION PROVIDES NO GUIDANCE TO ASSURE REASONABLENESS AND FIT

If the Committee finds substantial evidence to support the conclusion that the other messages required by the legislation advance the government's asserted interest and adds that evidence to the legislative findings, *Central Hudson* still requires the satisfaction of a final test: that there be a "fit" between legislative ends and means "that is not necessarily perfect, but reasonable; * * * not necessarily the least restrictive means but * * * a means narrowly tailored to achieve the desired objective." *Board of Trustees* v. *Fox*, 492 U.S. 469, 480 (1989). Under this prong of the constitutional test, we find the required warnings unreasonable.

It is axiomatic that a legitimate power of government can be exercised unreasonably. We find that to be the case here when separate public service announcements and other forms of alcohol awareness are available to the government to address the bill's laudatory goals. Through the nation's school system, through family planning clinics, and through brochures and other forms of consumer information, the government commands substantial means to inform the public about the dangers of alcohol abuse. Warning labels cannot be a narrowly tailored means of achieving such goals when there are considerable alternative and powerful channels for the kind of additional speech that the First Amendment anticipates is the proper response to speech that some segments of society deem undesirable. To justify going beyond these means, the government bears a particularly heavy burden to demonstrate that these remain insufficient to assure that the target audience receives necessary information and that warning labels substantially achieve what other efforts cannot.

The government may not assert the cost of using alternative channels to reach the target audience to justify mandatory warning labels, for then this justification amounts to a tax on the free speech rights of advertisers. The First Amendment cannot tolerate such a tax. See *Forsyth County* v. *Nationalist Movement*, 120 L.Ed 2d 101 (1992). Only if warning labels, written to achieve the purpose narrowly, provide the sole reasonable means available to reach an underserved audience can they be justified.

Even if it is proven that warning labels are necessary to reach an underserved population, we question whether sufficient justification exists to require that the warnings appear in both print and voice-over in television advertisements. Such a requirement is substantially more burdensome than a mere print warning. Moreover, some of the mandated warnings appear to take as much as fifteen seconds of airtime to read, a significant appropriation of the commercial for the government's purposes in light of the increased use of short, fifteen-second messages in broadcast advertising. To force advertisers to choose between longer forms of advertising in order to accommodate the government's message or to forego broadcast advertising altogether unreasonably restricts the flow of information to those consumers who

[1] See, e.g., R.E. Little, "Association of Father's Drinking and Infant's Birth Weight," 314 N.E. J. of Medicine 1644 (1986); F. Cohen, "Paternal Contributions to Birth Defects," 21 Nursing Clinics of North America 1 (Mar. 1986).

are not alcohol abusers. Commercial speech has First Amendment protection because society finds the free flow of advertising information of lawful products to be beneficial. By burdening that speech to the point that it may no longer take place, the legislation would amount to a de facto ban that clearly fails the fourth prong of *Central Hudson*.

We further note that alcohol companies spend considerable amounts of funds on alcohol awareness programs. These programs may be the losers if S. 674 encourages companies to eschew the airwaves because of the requirements or to spend money that would go into PSAs on the purchase of additional time for the required warnings instead. Thus, the warnings that are not carefully edited to convey only essential information become unreasonable due to their unnecessary length and may have the unintended impact of reducing the amount of educative information flowing to consumers.[2]

VII. CONCLUSION

The ACLU believes S. 674 is flawed legislation that does not meet constitutional prerequisites. No legislation should be acted upon until Congress can find, by substantial evidence, that the problems of alcohol abuse is the result of lack of information by consumers and that the required labels will achieve the education that is needed. To reach that conclusion, Congress must find that existing efforts and even vigorous use of alternative means cannot achieve the educative impact that advertising warning labels can for those consumers who will not otherwise be reached. If that hurdle is met, we further believe that the misleading and discriminatory warning aimed at pregnant women should be reworded to include the reproductive impact of alcohol abuse by men and that the warnings concerning the illegality of underage drinking and the likely loss of a driver's license if drinking while driving should be dropped.

Finally, if constitutional requirements have otherwise been satisfied, we urge that the broadcast warnings be edited to require only that which is necessary to accomplish the appropriate warnings and that the length be reduced so as not to occupy an unreasonable amount of commercial air time.

PREPARED STATEMENT OF MARGUERITE T. SAUNDERS, COMMISSIONER, NEW YORK STATE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES

My name is Marguerite T. Saunders, Commissioner of the New York State Office of Alcoholism and Substance Abuse Services (OASAS). My office—in partnership with localities, providers, and citizen groups—plans and regulates the state's system of alcohol and substance abuse treatment and prevention services. OASAS operates 13 Alcoholism Treatment Centers, which provide inpatient alcoholism rehabilitation services to 5,000 persons per year; and licenses, funds and supervises some 1,000 local, community-based providers which serve more than 100,000 persons in a wide range of inpatient, outpatient, and residential programs.

New York's substance abuse system alone is almost twice the size of California's; and the New York alcoholism system is the largest alcohol authority in the nation. The state's alcohol system alone is larger than the combined systems for drug and alcohol services in Florida, Illinois and Pennsylvania. According to recent federal data, New York's alcohol and substance abuse systems have resources available that total three quarters of a billion dollars.

OASAS also supports school and community education and prevention programs; promotes public awareness and citizen involvement through community action groups; fosters Employee Assistance Programs for drug-free workplaces; conducts research and monitors trends in substance use and abuse; provides education and training for persons dealing with clients; and establishes linkages to services for clients in other human service agencies and the criminal justice system.

I am pleased that the U.S. Senate Committee on Commerce, Science and Transportation has convened hearings on S. 674—the Sensible Advertising and Family Education Act (hereafter referred to as the SAFE Act). As I was unable to testify before the Committee on May 13, 1993, I respectfully request that my remarks in support of this important bill be included in the written record.

Alcohol is the most widely used and abused drug in America. Research indicates that alcohol is the "gateway drug" for youth, leading to later use of other drugs. The

[2] In the pregnancy warning, for example, it is unnecessary to add the sentence "Avoid alcohol during pregnancy," a concept more than adequately covered in the prior two sentences. A similar redundancy is found in the warning about increased health risks and the variety of other drugs that should not be mixed with alcohol.

effects of alcoholism and alcohol abuse are felt everywhere in our society, especially in our health care and criminal justice systems. Consider if you will, these grim statistics:

- Some 18 million Americans are addicted to alcohol or abuse it. There are over four and a half million alcoholics age 13-17, and at least 8 million American teenagers use alcohol every week.
- Alcohol is the number three killer in this country (after cancer and heart disease), responsible for over 100,000 deaths every year. Drinking contributes to hypertension and high blood pressure, cirrhosis, hepatitis, pancreatitis, and respiratory diseases.
- Fetal alcohol syndrome (FAS) is one of the top three known cause of birth defects with mental retardation and is totally preventable. FAS occurs in an estimated one out of every 750 live births, more common than Down Syndrome. The cost of treating FAS babies is $15 million and $670 million for the treatment of FAS children under age 18.
- In 1990 alcohol-related crashes killed more than 22,000 Americans—over half of all U.S. traffic fatalities. Alcohol-related traffic fatalities are the leading killer of young people age 16-24. Each year our society loses 2 million potential years of productive life to death and injury in drunk-driving crashes.
- According to HHS alcohol, costs society far more than all other drugs combined—an estimated $86 billion in 1988.

Over the past two years the HHS Inspector General conducted a series of reports on youth and alcohol at the request of Surgeon General Antonia Novello. Consider some of their findings:

- Of the 20 million young people in our country in grades 7-12, half of them—10 million—drink, 8 million drink weekly, and nearly a half-million "binge" or drink five or more drinks in a row every week.
- Students do not know the relative strengths of different alcoholic beverages. Two out of three young people can't distinguish alcoholic beverages from non-alcoholic beverages because of the shape of the bottles, or confusing labels; and 80 percent don't know that one shot of whisky has the same amount of alcohol as a 12-ounce can of beer.
- Young people are especially attracted to four different types of ads—those which make lifestyle and sexual appeals, use sports figures or youth heroes, or show people engaged in risky activities.
- Underage drinking poses great risks beyond the deaths and injuries resulting from motor vehicle crashes in the form of: truancies, poor school performance and high school drop-out rates, vandalism and thefts, sexual assault and date rape, pregnancies, sexual transmitted diseases and HIV infection, suicide and sometimes even death by overdose.
- Approximately one-third of our youth who commit serious crimes have consumed alcohol just prior to the commission of the crime; and one-half of college students who were crime victims admitted to being under the influence of alcohol and/or other drugs at the time of the crime as well.
- A third of all students have accepted rides from drivers who had been drinking. And almost half of the students who drink have been a passenger in a car that a friend drove—after drinking.

While the legislation before the Committee certainly won't solve all of society's alcohol-related problems, passage of S. 674 is a critical component of a comprehensive effort to combat substance abuse. It will enhance our existing prevention efforts to educate our citizens—young and old alike—about the health and safety dangers posed by drinking. Education is one of the most powerful tools we possess to promote healthy behaviors and lifestyles, and we must continue to do more to educate the public about the negative consequences of drinking alcoholic beverages.

The advertising practices of the alcohol industry constantly seduce our youth with messages that imply "if you drink me and you will be cool, carefree, happy and you will have fun." Alcohol advertising provides a one-sided view of drinking that fails to mention any of the health and safety risks that can result from drinking. One of the Inspector General's studies indicated that a third of all students do not understand the intoxicating effects of alcohol.

And the power of these ads are unmistakable. We know that there is a significant relationship between exposure and attention to alcohol and alcohol consumption. In September 1991 a Wirthlin Group poll showed that 73 percent of respondents agreed that alcohol advertising is a major contributor to underage drinking. Now I am not seeking an outright ban on alcohol advertising on television, although the removal of tobacco advertising from our television screens has certainly helped reduce tobacco consumption. The American public deserve to know, in plain terms, the

very real dangers associated with alcohol use so they can make informed choices about drinking. I am endorsing S. 674, the SAFE Act.

S. 674 seeks to even the playing field by requiring a series of seven, short rotating health messages about alcohol in the advertising of alcoholic beverages in newspapers, magazines, radio, television (including cable) and promotional displays. The messages would cover issues concerning the risks of drinking during pregnancy, underage consumption, alcohol addiction, drinking and driving, alcohol poisoning, the combination of alcohol and other drugs, and the increased risk of high blood pressure, liver disease, and cancer. The bill further establishes a toll-free 1-800 number operated by HHS to allow callers to receive additional information and resources.

Education and prevention does work; S. 674 is an excellent component of a comprehensive, holistic prevention agenda that will help us reduce and eliminate alcohol and other drug problems. Now I am sure you have complaints from the alcohol industry about the expense of these health warnings and their cry that they already follow advertising codes. However, those of us in the substance abuse field believe these codes to be extremely inadequate. They are voluntary, not legally enforceable and are narrowly written or too vague to really be effective. Furthermore, these voluntary codes cover only media advertising and not promotional activities, many of which are youth-oriented. And as for expense, the cost to the industry for these health messages is minimal in comparison to what society pays for alcoholism and alcohol abuse.

This legislation has support from public health experts, education professionals, and the American public alike. The 1988 report of the Surgeon General's Workshop on Drunk Driving and the 1990 Final Report of the National Commission on Drug-Free Schools included in their recommendations that health and safety messages be provided for consumers.

Over two-thirds of persons surveyed in a 1989 Wall Street Journal poll favored requiring warnings about the dangers of drinking on alcohol beverages containers as well as in alcohol advertisements. A 1990 Gallup poll found that nearly three-fourths of those persons surveyed favored requiring health warning messages in alcohol advertising.

Consumers want information about the products they consume, especially when there can be harmful effects. The Coalition for the Prevention on Alcohol Problems, representing over 30 million Americans through 85 diverse organizations, supports the SAFE Act. Next to the economy, the issue on everyone's mind is health care reform: we seek access to health care, we are interested in preventive health care, and we are concerned about the spiralling costs of health care.

Passage of S. 674 by Congress this year is an important part of our health care reform efforts. Health promotion and disease prevention are clearly part of the nation's agenda. The SAFE Act is absolutely compatible with the education and prevention efforts underway in the states. Its enactment will help raise the nation's awareness about the tragedies caused by alcoholism and alcohol abuse, and will help reduce the enormous human, economic, health, and social costs sustained by alcohol abuse.

If we truly care about the health and safety of our children, about reducing costs to our nation's health care system, and about preventing unnecessary deaths in our society, then we all have a responsibility to act—whether we are schools or parents, government or the alcohol industry, media or law enforcement. Government has a responsibility to inform and educate the American public about the hazardous effects of the alcohol they consume.

PREPARED STATEMENT OF MARK ALLEN, EXECUTIVE DIRECTOR, WASHINGTON STATE ASSOCIATION OF BROADCASTERS

My name is Mark Allen. I am the Executive Director of the Washington State Association of Broadcasters. Our Association serves the radio and television stations in local communities throughout the state of Washington.

The broadcasters of Washington state share with you the common goal of reducing alcohol abuse. The Washington State Association of Broadcasters has a very exciting story to tell about the pro-active efforts of Washington broadcasters to combat the use and abuse of alcohol by underage persons.

The WSAB Alcohol Task Force was formed approximately three and one-half years ago, as a coalition of broadcasters, citizens, social service agencies, alcohol treatment professionals, state government agencies and others, who were concerned by the growing problem of the use and abuse of alcohol by teenagers.

The process of bringing this diverse group together was one of breaking down barriers and building trust. We chose to concentrate on alcohol consumption by under-

age persons because of the strong, effective programs of groups such as the Ad Council and Mothers Against Drunk Driving, directed against drinking drivers, and the relatively unserved need related to underage drinkers.

The Task Force's Mission Statement is simple and to the point: "The aim of the WSAB Alcohol Task Force is to prevent alcohol use by people age 12 through 20 by promoting the message that it's OK not to drink."

We began with the understanding that we were not our own target audience; that the announcements we produced did not need to appeal to us. They needed to appeal to, and be effective with, underage persons who were using alcohol, or who were at risk.

So we went to the source. We used survey and focus group research to gain a better understanding of what approaches our target audience thought would be effective with their peers. The teen focus groups explored why teens drink alcohol; teens awareness of anti-alcohol public service messages; and, different approaches for additional public service announcements.

What we found was that teens want to see "real, everyday" people in public service announcements because it is easier to identify with people more like themselves. Most said that using celebrities was risky because teens tend to doubt the celebrities' motives. The credibility of rock stars and athletes has been damaged by the instances of drug and alcohol abuse by small percentages of their peers.

In addition, many of the teens involved in our focus groups and survey research said that realism in depicting the harsh and frightening consequences of alcohol abuse is more effective than any other.

Finally, and to us the most important finding, teens believe that words, concepts and pictures that reflect their viewpoint are the most effective way to communicate. They also feel that they should be involved in designing anti-alcohol campaigns to be most effective with their peers.

Based on the first research results, the WSAB Alcohol Task Force produced several public service announcements. We have since produced more and have a total of fourteen television announcements at this time. Washington stations broadcast the spots hundreds of times, in programs and day parts in which our target audience would be most likely to be watching.

The acceptance of these announcements, and their effectiveness, is very gratifying. We have convened additional focus groups to test the announcements which we produced. The recall level has been extraordinary. Members of the focus groups gave them very high marks for effectiveness. Unbeknownst to us, representatives of the Idaho Governor's office had our spots tested with teens, along with other such announcements, and the WSAB Alcohol Task Force spots again received high responses for effectiveness.

We have had requests for copies of the spots from literally dozens of organizations involved with youth and alcohol issues from across the United States. The efforts of the Task Force have been recognized by awards from the Washington Traffic Safety Commission and the National Commission Against Drunk Driving. Individual announcements have won awards in regional advertising competitions, as well. This tells us that our approach was worth the time, cost and effort.

Public service announcements are not the only project undertaken by the Task Force. We have also developed a model which broadcasters and community groups can use in their local communities to start their own local task forces. The WSAB Alcohol Task Force has made presentations to broadcasters and community mobilization groups in the five significant marketing areas in Washington state. The response from those communities has been very positive.

We hope to have local task forces form in those communities, and then have them begin to develop programs based on the particular needs of their communities. As public service announcements or additional printed materials are developed by local task forces, WSAB will act as the distribution "hub" to facilitate the use of all materials and announcements by broadcasters and community groups in all areas of the state.

The Alcohol Task Force has published an "Outreach Handbook" which presents the community task force development model, and a summary of the initial research. It also suggests to broadcasters that they review their programming, public service efforts and news coverage to uncover institutionalized, inappropriate attitudes in the handling of alcohol related issues.

The WSAB Alcohol Task Force will continue to use focus group and survey research with our target audience, because the continuing effectiveness of our public service announcements is only as good as the information on which they are based. The Task Force has also created a permanent group, The Youth Advisory Committee, to act as an additional resource. We have more public service announcements in development. In testing the existing spots, a very common response from focus

group members of all racial backgrounds was that we had not used persons of color. Our next generation of spots will address that issue, and other announcements will focus on parental and sibling role models.

The Task Force has broadened its scope, by adding educators, and creating a committee which is developing materials to be used in schools, with curricula which teaches critical viewing skills. We have two goals: First, we have recognized that the students are a "captive" audience, and that we can achieve additional repetitions of viewing of our spots by having them seen by grade, middle and high school students in a classroom setting. Second, the program teaches the students advertising techniques and asks them to apply those concepts to developing further announcements combatting underage drinking, so that development of more spots becomes self-perpetuating.

Broadcasters are highly sensitive to the problem of alcohol use and abuse by young people in our society.We share with you the common goal of eliminating it.We believe that a pro-active approach, instead of attacking the problem negatively, is the solution that will achieve the goal which we all desire.

Based on our research with our target audience we do not believe that the approach contained in S. 674 will accomplish anything. Young people tell us that such warnings are not effective; are not a factor in their decision to drink. Peer pressure, parental values, accessibility, and the invincibility of youth are the determinative factors.

The public service messages that the WSAB Alcohol Task Force produces don't tell young people what they can't do. We just tell them that it's OK not to drink; that they can give themselves permission to say "no thanks."

I thank you for the opportunity to present this statement today. WSAB very much appreciates your interest in this important issue and the opportunity to present to you an overview of the WSAB Alcohol Task Force.

I would be pleased to answer any questions at any time.

[The Community Outreach Handbook—Tough Choices: Tackling the Teen Alcohol Problem," by the Washington State Association of Broadcasters' Alcohol Task Force may be found in the committee files.]

LETTER FROM DEAN E. SMITH TO FACULTY CHAIRMEN AND ATHLETIC DIRECTORS, ACC INSTITUTIONS

MAY 19, 1989.

At the ACC meetings last May, our Commissioner, Gene Corrigan, addressed the ACC basketball coaches regarding the conference's wish to fight drugs. Gene asked us to suggest anything that would help and said that the conference could have some funds to support it. As I knew at that time what I thought might help, I planned to write Gene shortly afterward. Now, it has been a full year, and I have written my suggestions to the NCAA, but did not address the faculty chairmen and athletic directors of the ACC. I have discussed this suggestion with Gene verbally.

In my opinion, the best method the ACC could use to fight the drug problem in our society would be a refusal to accept beer advertising in our athletic programs and the ACC television package. The beer ads are cleverly done and attract people who watch these advertisements. There is a vast audience of young people from 10 to 21 (generally the legal age for drinking alcohol) who learn that beer is no different than Coca-Cola. The advertisers say you will feel better about yourself and attract the best dating partners by having a beer. Nowhere does the advertisement indicate that beer is a drug and is referred to by most experts as the "gateway drug" to the even more dangerous marijuana, cocaine, and heroin. Beer ads have become so dangerous since beer is presented as being acceptable and different from other forms of alcohol, which simply is not true. We all know that alcohol has caused many tragedies.

It is hypocritical for the NCAA and the ACC to encourage our student-athletes to tell young people they should say "No" to drugs when we are saying "Yes" to beer ads.

Undoubtedly, the major objection for the ACC to stop beer advertising would be the threat to loss of revenue. I, also, was hypocritical in dealing with my TV show. When a beer sponsor first came on the Carolina Football Show, I told them I would not allow our basketball show to be sponsored by beer. However, I did allow a beer advertising to be done during the course of the show by the local television station from which I was paid. My current contract (1987–91) with Jefferson for my TV show does stop any type of beer advertising. They told me they might not sell the

TV ad. I told them I would pay the sponsor fee to fight beer advertising at athletic events during those 30-second spots if they could not find another sponsor. However, they did easily sell the spot to another advertiser.

I should also point out that I do enjoy having an occasional beer and certainly feel that all of us should have that choice. I know I never really wanted a beer until my father told me I could not have one! However, I do not want our children and grandchildren who watch ACC basketball to be encouraged to drink beer. It is a huge social problem on our campuses, as they do not drink 1 or 2 beers, but 15! If we allow beer advertising, I am surprised that the FCC does not allow advertising for Scotch, bourbon, or vodka.

A recent Sports Illustrated article quotes the beer people saying that sports is their answer to advertising, and that they spend millions to present it to not only people over 21, but many other people who enjoy basketball and football who are under 21.

Perhaps this week this proposal could be discussed and the ACC could join Dick Schultz in his efforts to stop beer ads. It would also show the general public that our universities are willing to possibly lose some money to fight the drug problem. We are not greedy!

DEAN SMITH.

PREPARED STATEMENT OF RONALD A. SARASIN, PRESIDENT, NATIONAL BEER WHOLESALERS ASSOCIATION

Mr. Chairman, I appreciate the opportunity to testify on S. 674, a bill to require one of seven government warnings to be made a part of every licensed beverage advertisement and promotional piece. The National Beer Wholesalers Association, which represents the nation's largely family-owned, small-business distributors of malt beverages, is opposed to this bill.

First, I want to express to you and to your senior colleague, Sen. Thurmond, our deepest sympathy over the tragic loss he and his family recently suffered. Nonetheless, I am obliged to urge the Committee to take great care in considering whether the bill under review represents an appropriate response to this tragedy or to the larger problems we face with drunk driving and underage drinking.

I. LEGISLATION BASED ON FAULTY PREMISE

S. 674 is based on the faulty premise that advertising increases overall consumption and even causes abuse. This is simply not the case, as a number of U.S. government reports and studies have demonstrated. A report last year by the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the preeminent government authority on the subject, is only the most recent to say that there is no evidence of a link between advertising and abuse. NIAAA wrote to the Bureau of Alcohol, Tobacco and Firearms that "[s]cientific evidence for this recommendation [ad warnings] with respect to alcohol warning labels, however, is not yet compelling."

Two years earlier, Secretary of Health and Human Services Sullivan made the same point in nearly the same words in his "Seventh Special Report on Alcohol and Health," January, 1990: "A number of studies have also examined advertising of alcohol beverages, and other portrayals of alcohol in the media. Research in this area, however, has thus far yielded no conclusive evidence about the role of media in alcohol use problems." Further, "[r]esearch has yet to document a strong relationship between alcohol advertising and alcohol consumption." The Federal Trade Commission, in 1985, in response to a petition filed by the Center for Science in the Public Interest and others, found "no reliable basis on which to conclude that alcohol advertising significantly affects alcohol abuse."

Indeed, the only significant government study to be used to demonstrate such a link is cited in the "Congressional Findings" section of S. 674. It reads,

> (11) A major 1981 federally funded study found a significant relationship between—
>
> (A) exposure of individuals to alcoholic beverage advertising as youth; and
>
> (B) drinking behaviors and attitudes of the individuals that can lead to certain forms of problem drinking.

However, one of the co-authors of the report, in testimony submitted to this Committee last year, rejects the use of his report to support this legislation. Dr. Martin Block, professor of advertising at Northwestern University, said, "The study actually provides no justifications for restrictions on or curtailment of alcohol advertising." Block added, "This reference [in the bill] distorts the substance of our report and ignores the caveats we put into the report." Thus, there is precious little credible

scientific evidence that supports the contention that advertising increases overall consumption or causes abuse.

II. GOVERNMENT WARNINGS ALREADY APPEAR

As the Committee is well aware, a two-part government warning now appears on every bottle, can and keg of beer. The Alcoholic Beverage Labeling Act became effective three and a half years ago. The Committee intended the label warnings to "inform the public regarding health hazards from alcohol consumption or abuse" and determined that a "clear, nonconfusing reminder of these hazards would be beneficial." Furthermore, the report concluded, "[t]he Committee believes that the label in the bill, as reported [and enacted], would achieve these goals."

The situation has not worsened since those words were written. In fact, almost all indicators of alcohol abuse, drunk driving and teenage drinking are down. In addition, the public appears to be well aware of the dangers of abuse: A 1991 Roper survey showed that 96 to 99 percent of the public, including young people, already knows the information contained in the version of this bill that was introduced in the last Congress.

III. PURPOSE OF BEER ADS IS TO INCREASE MARKET SHARE

The real purpose of advertising for mature product categories like beer is to cause consumers to choose Brand X over Brand Y, not to recruit new consumers. Competition in the beer industry has reached a level of intensity that few other products match. In fact, one point of market share is worth about half a billion dollars at retail.

Several kinds of evidence support the assertion that the purpose of beer ads is to capture market share. First, beer advertising expenditures doubled in real terms between 1976 and 1988, but per capita consumption was virtually unchanged. Second, studies that have focused on the effects of partial or complete bans on beer advertising show little or no effect on consumption. Finally, other studies that attempt to show, through experiments and surveys, the effects of ads on individuals and specific groups, have failed to demonstrate a causal link between ads and attitudes.

IV. MANDATED WARNINGS THREATEN FIRST AMENDMENT

Despite the protestations of the bill's supporters to the contrary, S. 674 raises very serious First Amendment concerns. Since 1975, the courts have repeatedly held that commercial speech is protected. In two cases decided in the mid-1970s, the Court reasoned that the free flow of truthful information on economic issues is essential to a free market (*Bigelow* v. *Virginia*, 421 U.S. 809 (1975) and *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U.S. 478 (1976)).

On those occasions where there is a legitimate governmental interest in regulating commercial speech, the courts have held that the restrictions must be "narrowly tailored to meet the desired objective." *Board of Trustees, State U. of N.Y.* v. *Fox*, 492 U.S. 469 (1989).

Even if the bill's proponents could demonstrate a strong governmental interest in providing information that the public already knows, the broadcast versions of the bill's warnings, which must be read, can take up to 70 percent of the time for a 15-second radio or television spot. That is in no sense a "narrowly tailored" infringement of speech.

V. BEER ADVERTISING ALREADY HEAVILY REGULATED

The fact of the matter is that beer advertising is already subject to more governmental regulation than that for any other commodity. The Bureau of Alcohol, Tobacco and Firearms regulates beer ads by prohibiting "false, misleading, obscene or indecent" ads and other aspects of ads "irrespective of falsity" if the Secretary of the Treasury finds that they are likely to mislead the consumer. In addition, the Secretary may require additional information "as will provide the consumer with adequate information as to the identity and quality of the products advertised."

The Federal Trade Commission (FTC) has broad regulatory jurisdiction over "unfair or deceptive acts or practices" in advertising and other promotional activities. I am sure the Committee is aware of a number of recent investigations and actions undertaken by the FTC in exercising its authority in this realm.

In addition, under the 21st Amendment to the Constitution, states also exercise considerable regulatory authority over beer advertising and promotions within their borders. Thus, beer and other licensed beverages are sold under a formidable, multi-layered regulatory scheme that strictly governs advertising and promotions.

VI. REAL SOLUTION TO ALCOHOL ABUSE IS COMMUNITY INVOLVEMENT—BEER WHOLESALERS ARE IN FOREFRONT

NBWA continues to believe that real progress in the battle against alcohol abuse, drunk driving and underage use of beer will be made at the community level. I am pleased to report to you today that the vast majority of beer wholesalers across the country participate in such programs. We have recently completed a survey of our 1700 members that reveals 87 percent of beer wholesalers participate in brewer-sponsored educational and service programs, 57 percent sponsor public service announcements in broadcast and print media, 55 percent provide safe-ride programs, 53 percent participate in programs to halt underage drinking, 49 percent have established company safety programs for their employees and 43 percent make alcohol education presentations to youth in their communities. In addition, substantial numbers of beer wholesalers also participate in efforts to reduce boating, hunting and diving accidents and to post public service billboard advertisements.

For the information of Committee members, I am providing details on beer wholesaler efforts in your states. That information will be provided under separate cover.

NBWA also does its part to fight underage drinking and drunk driving. In 1991, NBWA and the Beer Institute distributed over 2,000,000 point-of-sale posters to over 600,000 retail outlets. This year, we are distributing over 1,000,000 cards to help retailers detect fake IDs and prevent underage purchases. Also this year, NBWA, the Beer Institute, and the National Association of Broadcasters have launched a nationwide public service announcement campaign against underage drinking. The campaign features two television ads and one radio ad. The spots are scheduled to air on over 1100 television and radio stations.

VII. MANDATED WARNINGS MISGUIDED AND, THEREFORE, UNWARRANTED

The Committee needs to recognize that the efforts of many organizations and individuals to reduce drunk driving, underage drinking and alcohol abuse are now beginning to pay off. Alcohol abuse is declining. Drunk driving fatalities for drivers aged 16-20 are down 47 percent since 1982. High school surveys show a 48 percent decline in daily drinking since 1979. Binge drinking among high school seniors is down 28 percent over the same period. Alcohol-related fatalities (those in which any detectable alcohol was present) for the general population have declined 28 percent since 1982. Expressed as fatalities per mile driven, alcohol-related fatalities are down 43 percent over 10 years ago.

Nonetheless, a great deal remains to be done. The nation's beer wholesalers are committed to reducing drunk driving accidents and ending underage drinking. We ask the Committee to support proven steps to deal with these very serious problems and to reject a punitive and ultimately unhelpful ad warning scheme.

PREPARED STATEMENT OF ROBERT P. KOCH, VICE PRESIDENT FOR FEDERAL RELATIONS, WINE INSTITUTE

I am Robert P. Koch, Vice President of Federal Relations for Wine Institute, the industry association of some 450 California wine producers. I am privileged to speak on behalf of the American Vintners Association, a national association representing approximately 325 winegrowers in 36 states; the National Wine Coalition, an organization of 250 domestic and foreign members, a number of which are associations with a combined membership of several thousand; and Wine Institute.

Most of America's wineries are rural, agricultural operations. The members of our organizations are primarily small, family-owned producers.

America's winegrowers oppose S. 674 and we ask you to consider seriously the following:

1. The United States wine industry has a well established voluntary advertising code. The wine industry has not engaged in the kind of advertising that the proposed "warnings" are intended to balance.

2. Extensive research by respected scientists contradicts the statements made in S. 674. In fact, the public remains aware of and is responding to the risks of alcohol abuse leading to major declines in alcohol abuse indicators.

3. It is vital to distinguish abuse from responsible consumption, identify the abuser groups and determine how best to reach them. Effective, positive education programs need to target these groups.

4. The proposed warnings would unjustly harm the U.S. wine industry which is a significant contributor to American society and culture.

Our associations urge Congress to reject S. 674 and we would like to briefly summarize eight key reasons for opposing this bill:

I. THE WINE INDUSTRY'S VOLUNTARY ADVERTISING GUIDELINES ARE ALREADY EFFECTIVE

• Nearly 15 years ago, Wine Institute adopted a comprehensive Code of Advertising. In subsequent years, the American Vintners Association and most of the state wine associations voluntarily ratified its provisions. In 1987, the Code was expanded to include the new wine cooler products. We have provided copies of this Code for your information and study.

• Among its guidelines, the Code condemns any advertising with particular appeal to persons below the legal drinking age, such as those using models under age 25; music, language or gestures directed at those below the legal drinking age; the use of professional athletes; or placement of advertising in magazines, newspapers, or television programs aimed at young people. Wine advertising and promotional materials stress that wine should be a moderate accompaniment to food; research shows that this approach has contributed to responsible drinking habits.

• These voluntary provisions have worked well. In fact, Wine Institute and others in the U.S. wine industry have voluntarily adhered to these standards and the Code has been lauded on the floor of the Congress as a model of social responsibility.

II. THE PUBLIC REMAINS AWARE OF AND IS RESPONDING TO THE RISKS OF ALCOHOL ABUSE

• Public awareness of the dangers of alcohol abuse remains very high. Virtually all Americans know that it is dangerous to drink and drive a car or operate machinery. Also, a 1985 Gallup Poll indicated the high level of awareness of the risks associated with alcohol abuse, finding that 97 percent of the public view alcoholism as a serious national problem.

• Reports by the National Highway Traffic Safety Administration and the Centers For Disease Control have reported significant declines in drunk driving in all age groups, but specifically among young people. Likewise, the U.S. Department of Transportation reported an over 20 percent decline in traffic fatalities over the last decade. These organizations have also reported declines in 1991 drunk driving fatalities which surpass national health goals for the year 2000. These reductions have been attributed to stricter law enforcement and positive educational programs— two approaches that the American wine industry strongly supports.

• A 1990 Roper Poll found that 3 out of 5 Americans surveyed believe proposed beverage warnings will not curb abuse. More than two-thirds said education is the best way to reduce alcohol abuse along with stricter enforcement of drunk driving laws. These are positions the wine industry strongly supports.

III. WINE ADVERTISING DOES NOT PROMOTE ABUSE

• S. 674 declares that warnings are needed because alcoholic beverage advertising promotes abuse. However, in 1985, the Federal Trade Commission reviewed the evidence and found "* * * no reliable basis on which to conclude that advertising significantly affects alcohol abuse." This is further supported by a 1990 Health and Human Services report to Congress which found "* * * research has yet to document a strong relationship between alcohol advertising and alcohol consumption."

• Advertisements are designed to enhance product preference among those who choose to drink. All wine advertisements already adhere to the regulations set forth by the Bureau of Alcohol, Tobacco, and Firearms; the Federal Trade Commission; and by various state and local authorities. In addition, the American wine industry adheres to its voluntary advertising code, mentioned earlier.

• Along with many other studies, an empirical study by Strickland, et al. which appeared in the Journal of Studies on Alcohol (1982), concludes that the content of magazine and television advertising, does not (a) appeal to non-drinkers, (b) promote over-drinking by current drinkers, or (c) emphasize thematic appeals alleged to increased drinking. Strickland also found that advertising of alcoholic beverages has literally no impact on the alcohol problems among teenagers.

IV. THE AMERICAN WINE INDUSTRY IS A SIGNIFICANT CONTRIBUTOR TO AMERICAN SOCIETY AND CULTURE

• It is particularly inappropriate to attack moderate wine consumption. Wine is accorded a prominent place in many cultures and religious practices. Furthermore, a growing body of scientific evidence suggests positive health benefits from moderate wine consumption. During the last decade, dozens of studies conducted by respected research institutions such as Harvard University and Boston School of Medicine found that moderate alcohol and wine consumption may reduce the risk of coronary heart disease.

• The rotating warnings that would be required by S. 674 would create the unfair and inaccurate impression that even moderate consumption of wine is hazardous. This is especially misleading since many recent studies have associated moderate wine consumption with a healthy diet. In fact, just recently Harvard University researchers from the School of Public Health included moderate wine consumption in a new dietary pyramid based on the "healthful" Mediterranean Diet which is associated with increased life expectancy and, specifically, a decreased risk of coronary heart disease. At the same time, researchers at the University of California, Davis have found that non-alcohol compounds in wine, in addition to ethyl alcohol, may contribute to this positive health effect.

• Studies have also shown that wine is generally consumed in a meal time, home setting. Based on these and related findings, researchers at Washington University, St. Louis, have concluded that the overwhelming majority of American wine drinkers are generally very moderate and responsible consumers. Lending further support to these findings, a 1992 Gallup Poll confirmed that alcoholic beverages, especially wine, are becoming more widely accepted as a part of everyday life, and are predominantly consumed in moderation.

V. THE VALIDITY OF THE "FINDINGS" IN THE PROPOSED LEGISLATION CAN BE QUESTIONED

• Contrary to the point of view stressed in S. 674, statistics point to moderate and responsible consumption of alcohol beverages among those people who choose to drink. Studies published in the Journal of Studies on Alcohol (1990) conclude that wine consumers are moderate and responsible adult drinkers who drink an average of 1.5 glasses a day predominately at home around meal times.

• Many claims made in the advertising proposal are not supported by qualified scientific evidence and are often misleading and fail to acknowledge that key alcohol abuse indicators are declining. For example, a 1990 special report to Congress indicates that only 4 percent of hospital discharges involved an alcohol-related diagnosis, rather than the 25 percent stated in the findings. As stated earlier, the U.S. Department of Transportation reported a 22 percent reduction in alcohol-related fatalities since 1988 and researchers from the Center of Alcohol Research at Rutgers University found a significant and steady decline in alcohol consumption during pregnancy.

• The findings section does not put the issue in perspective by failing to report on the significant decline of alcohol consumption among people under the age of 21. Recent reports by NIAAA show that even though more young drinkers are involved in fatal accidents, fewer of these accidents involve alcohol. In addition, according to the U.S. Department of Justice, "of those people arrested for driving under the influence of alcohol, only 2 percent reported drinking wine."

VI. THE PROPOSED WARNINGS ARE WHOLLY UNNECESSARY, ESPECIALLY SINCE THEY FAIL TO MAKE A DISTINCTION BETWEEN USE AND ABUSE

• Alcohol abuse is a complex public health problem. Simplistic messages imply that, by providing a warning, something is being done about the problem. Further research may produce efficient ways of identifying individuals at risk, so that targeted education, intervention, and treatment programs can be designed.

• The message that abusive drinking is bad for you is already widely broadcast by education, religion, the family, and the media. The wine industry has also played a leading role in supporting important education initiatives through e.g. the Licensed Beverage Information Council.

• The proposed warning messages make no distinction between use and abuse or even between light, moderate, and heavy consumption, yet research has shown that any serious education program should emphasize these important distinctions.

VII. THESE WARNINGS WOULD UNJUSTLY HARM THE U.S. WINE INDUSTRY

• The wine grape industry has become a vital segment of the agricultural economy in 43 states with over 1,300 bonded wineries and 8,000 grape growers in the United States. In 1992, sales of American wine in U.S. markets reached $8.5 billion and generated over $1.4 billion in taxes and fees at all levels of government.

• The wine industry throughout the United States includes hundreds of small producers, who rely on promotional materials to sell their products. The proposed rotating warnings would impose significant costs on many of these small businesses without any perceived benefits.

• S. 674 is an unwarranted burden on the wine industry. Based on current research, its proposals do not represent an answer to the complicated public health problem of alcohol abuse.

VIII. RESTRICTIONS OF THIS KIND MIGHT DIVERT ATTENTION AWAY FROM MORE DIRECT AND EFFECTIVE METHODS

• The recent decline in drunk driving fatalities has been attributed to the "systems approach," which includes stricter enforcement of existing laws, expeditious adjudication, education, and treatment. Congress should explore how to encourage similar approaches to other problems associated with alcohol abuse.

• A newly released monograph from Rutgers University on Alcohol, Culture and Society demonstrates that societies with relatively low alcohol abuse rates make moderate alcohol beverage consumption an integral part of their daily living and stress the unacceptability of overindulgence. A recent GAO report stated that education, which encourages such moderate approaches, should be considered in place of additional restrictions and negative reinforcement.

• As the FTC stated in a 1989 testimony regarding alcohol beverage advertising warnings, "It would seem prudent to avoid overuse of one of the government's most important forms of health alert—a general health hazard warning—if it is possible to communicate the information as effectively through other means."

The American wine industry is committed to being a responsible partner in the national effort to curb and solve the complex problem of alcohol abuse. We support vigorous law enforcement for drunk driving and education programs designed to deal with the potential health risks associated with alcohol abuse. An alcohol warning statement has been required on every container of alcoholic beverages since November 1989. Scientific knowledge to date has not justified any augmentation of that message. Likewise, there is no scientific data that would justify the proposed rotating health warnings in advertising.

In summary, S. 674 is a simplistic approach to complex problems. The rotating warnings that S. 674 would require on wine advertising are unnecessary and would place burdens on the U.S. wine industry that cannot be justified. The Association of American Vintners, the National Wine Coalition and the Wine Institute thank the Committee for this opportunity to express their views and urge rejection of S. 674.

PREPARED STATEMENT OF RUTH ANNE MANTEAU, ROSEBUSH, MI

I would like to present my written testimony regarding the SAFE bill, S. 674. On September 30, 1990, my only son died of an alcohol overdose. This occurred on the night of homecoming at the beginning of his junior year of high school. He was 16 years old. My son did not have a long term problem with alcohol. As far as his father and I knew, this was his second experience with alcohol. We knew that he had experimented with beer the night before homecoming and discussed it with him. We talked about the dangers of alcohol as we knew them. We did not discuss alcohol overdose because we did not realize the danger. Perhaps the outcome would have been different for my son and my family if we had.

I believe it is important that you know a little about my son, about the kind of young man he was. He was pretty average, a normal 16 year old. He wasn't crazy about homework and cleaning his room or making his bed was not high on his list of things to do. However, he was a good boy and a son of whom we were very proud. He wasn't a boy who was in trouble with school, his parents, or the police. Chris was a high-school wrestler, and very good at the sport. He was a state qualifier for his school. He also wrestled for several years in a free style program, where he was a state champion and placed second in a national event. In order to do that well in a sport, he trained rigorously and cared about keeping his body healthy and in good shape. I believe that the alcohol industry advertising method of using well known and respected sports figures to encourage the use of alcohol products influenced Chris and others like him. Perhaps the presence of warning labels would also have had an effect.

Chris was very popular with his friends, their parents, and his teachers and coaches at school. There was always a smile on his face and he always made an effort to make life fun for those around him.

I guess that I'm trying to say that I believe that not only did my family suffer a great loss, I believe that our community and the future also suffered a loss. We have no way of knowing what contributions Chris might have made to society. Please think about this and multiply it many times because the tragedy of my son's death is not an isolated event. In the year of 1990 from March to November, my son was only one of three deaths due to alcohol overdose in our small community of 20,000.

My son knew the dangers to others if he drank alcohol, because on that night he handed the car keys to his girlfriend when he began to drink. I do not believe he

would have drank as much as he did (a fifth of whiskey in less than one half hour), if he had understood the danger to himself.

Please do whatever you can to ensure the passage of S. 674. I would wish for no other parents to hear the words my husband and I heard on the morning of September 30, 1990, "Chris had too much to drink last night, and now he's dead."

Thank you for the opportunity to share my son's story with you.

LETTER FROM STEPHEN G. BROCK, WCIV–4, ALBRITTON COMMUNICATIONS CO.

MAY 13, 1993.

The Honorable ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR HOLLINGS: There is no parent who can't sympathize with Senator Thurmond. The loss of a child is every parent's worst nightmare. Your feelings are understandable.

I'm sorry to have to take a position that might appear insensitive, but the labeling legislation before you is not going to help the problem of alcohol abuse. It will, however, but it will have a devastating effect on broadcasting—the very people who have provided so much drug and alcohol education.

Last summer a teenager, my son's age, was killed at the traffic light near the station by a 63-year-old drunk driver. He had been previously convicted of DUI.

More recently, Vic Rawl's teenage son was killed after a party where alcohol was available.

Only last week the legislature gutted a tougher DUI bill for South Carolina. Tougher laws might have prevented both of these deaths. Labeling would not have affected the outcome.

I do understand the emotion that is propelling this bill. It is an understandable, even admirable human reaction to the tragedy of a friend, but the legislation is the same as it was before the loss of Senator Thurmond's daughter.

Again, I'm sorry to have to plead this case at this time, but the bill should not be considered until it can be heard on its merits.

Sincerely yours,

STEPHEN G. BROCK.

PREPARED STATEMENT OF DR. SUSAN J. SMITH, MEMBER, RID–SNAP, A CITIZENS' PROJECT TO REMOVE INTOXICATED DRIVERS AND WORK FOR A SANE NATIONAL ALCOHOL POLICY

I am a specialist in Internal Medicine; Assistant Professor of Medicine, College of Human Medicine, Michigan State University; Assistant Chair for the Department of Medicine, Flint Campus; Director of Internal Medicine Education at McLaeen Regional Medical Center; and I am the most recently appointed member of the National Advisory Board of RID (Remove Intoxicated Drivers)—USA advocating a Sane National Alcohol Policy (SNAP) and passage of the SAFE (Sensible Advertising and Family Education) Act, Senate Bill 674, House Bill 1823.

But perhaps my most important credential is that I am the aunt of Chris Maniteau, a victim of alcohol poisoning, who died September 30, 1990. I bring that expertise and my knowledge as a specialist in Adult Medicine (Internal Medicine) to describe the medical consequences of teenage binge drinking.

First and foremost, the death of my nephew, Chris Maniteau and Henry George and Don Sharp (Isabella County, Michigan); the death of Kate Lutz (Jackson, Michigan); the death of Todd Williford (North Carolina); the death of Keri Burdette (California); the death of other recent victims whose names have become all to familiar to me through the stories of their tragic demise, Brian Ball (Texas), Matthew Hickok (Minnesota), Marie Brune (Texas), Kimberley Money (Missouri) and Brandon Popek (Missouri), and the death of thousands of other young people who are victims of alcohol poisoning (alcohol overdose) every year, are not chance occurrences, not freak accidents. They are 100 percent predictable, a 100 percent certainty, once these children drink the massive quantities of alcohol described in their individual stories: a fifth of Southern Comfort, a pint of Vodka, etc.

In some of these circumstances the teen knew not to drink and drive, but the tragedy, the preventable tragedy that their surviving parents describe, is that these teenagers did not know, nor did the teenagers with them, nor did any teenagers in their communities, nor did their parents, nor did any adults in their communities, that alcohol in sufficient quantity will cause coma and death. They did not know

that there is a lethal dose of alcohol which can be precisely predicted and whether you call it alcohol poisoning or alcohol overdose, it is idling our children.

It is widely known that alcohol can suppress the reflexes necessary for safe driving. But virtally no one untouched personally by the tragedy of alcohol overdose knows that alcohol can also suppress the most primitive reflexes any animal possesses. It can suppress the reflex which makes us gag if we vomit, but even more basic, it can suppress the reflex which tells our bodies to breathe and our hearts to beat.

The children succumbing to alcohol overdose are often children with no previous drinking experience, often challenged by their peers to undergo these rights of passage. "You're a big girl now, Katie," Kate Lutz was told on her sixteenth birthday, the night she died. "Are you man enough?" Todd Williford was asked the night he concluded his junior year of high school, and his life. Peggy Williford closed her testimony with the statement, "I told my son everything I knew about alcohol. I didn't know about alcohol poisoning."

While drinking and driving killed teenagers of our generation, and still kills today's teenagers, a new phenomenon is robbing parents of their children, and robbing our society of its future leaders; that phenomenon is binge drinking. An entire paraphernalia has been developed to promote the consumption of massive amounts of alcohol in one sitting. Young people are drinking hard and fast to get as drunk as possible, as fast as possible, not aware of the very real probability that many will die through this process. Simply put, it leads to alcohol overdose, paralyzing the centers which tell our bodies to perform the most basic of all functions, those we take for granted, breathing, our hearts beating, etc.

Our government, which exists solely for the purpose of protecting our citizenry, must demand that this beverage be packaged and labeled and promoted (if it is to be promoted) in ways consistent with protecting our citizenry. We must never again allow our children to be victimized by the alcohol beverage industry's "failure to warn". Our Congress must act now to see that knowledge about the hazards of alcohol are promulgated with the same vigor and frequency as their promotion. Our government, in its duty to protect its citizenry, must mandate warning labels accompany all advertising, whether broadcast or print media.

Our elected representatives must not continue in this conspiracy of silence perpetrated by the alcohol beverage industry in their failure to warn, their failure to provide notice to the public that drinking too much too fast will cause coma and death. Warning information must note that young people are the most vulnerable elements of our society.

This is an enormous problem. It is a public health problem of enormous consequences, robbing our society of its most precious resource, our young people. It is robbing us of our future leaders, our future citizens. It is robbing parents of their children.

In a recent survey of 124,000 Michigan high school students, one third of high school seniors admit to binge drinking (consuming five or more drinks in a row) in the past two weeks. National surveys reveal strikingly similar statistics; thirty-five percent of high school seniors admit to engaging in behavior placing them at risk for coma and death every two weeks.

Interestingly, there is no accurate national data on the numbers dying from alcohol poisoning. Such deaths are ascribed to respiratory arrest, aspiration, asphyxiation, cardiac arrest, and other causes masking the true numbers dying from alcohol poisoning each year in our country. Many of these individuals are young people subject to peer pressure, in the midst of the experimentation phase of their relationship to alcohol and other drugs.

Their bodies, virginal to this poisonous exposure, succumb to coma and death at blood alcohol levels as low as 0.25 gm percent. Our teenagers and their parents must be made aware of this danger. Warning labels would help ensure that the public knows, parents know, and their children know, of the dangers of alcohol overdose.

Many brave people with personal knowledge of alcohol poisoning went to Washington D.C. on May 8th to attend a conference on teen-age binge drinking and to speak to the press and to our public representatives. They went to tell their sad stories, in hopes that other lives could be saved. They described their losses, bared their souls, exposed their open wounds as they begged and demanded that our public representatives protect our youth by making the SAFE Act law.

They requested our public representatives to ensure that their constituents, and the children of their constituents, are not taken like lambs to the slaughter by the alcohol beverage industry.

I would like to conclude with a quote originally attributed to Mistophanes and later adapted by William Congreve in 1697 in his play "The Mourning Bride".

"Heaven has no rage like love to hatred turned, nor hell a fury like a woman scorned."

But instead I would call my paraphrased quote "Mourning Parents". I would beg our publicly elected representatives to hear this plea, and would advise them that "Congress knows no force so strong as that of parents, their children killed by alcohol poisoning."

The numbers of such parents are growing by about 12,000 every year as approximately 6,000 children succumb annually to a fatal alcohol dose. (The relatives of such children total over 100,000.) The SAFE Act which requires that seven different warning labels rotate in conjunction with promotional ads is a step in the right direction. Adults and teenagers have the need, and the right, to know the hazards associated with alcoholic products.

PREPARED STATEMENT OF NEWSPAPER ASSOCIATION OF AMERICA AND THE NATIONAL NEWSPAPER ASSOCIATION

The Newspaper Association of America (NAA) and the National Newspaper Association (NNA) believe that the proposed content regulations contained in S. 647, the "Sensible Advertising and Family Education Act", raise First Amendment issues and implementation problems for newspapers that should be carefully considered by this committee.

The NAA represents approximately 1,350 newspapers in the United States and Canada. The majority are daily newspapers that account for more than 90 percent of the daily circulation in the United States. The NNA is a national trade association representing more than 4,600 community newspapers—most of the weeklies and a third of the dailies in the U.S.

Our concern centers on Section 3 and 4 of S. 647. Section 3 of the bill declares that "it shall be an unfair or deceptive act or practice under section 5 of the Federal Trade Commission Act for *any person to advertise* any alcoholic beverage, *or cause any alcoholic beverage to be advertised* * * * through magazines, newspapers, brochures, and promotional displays * * * unless the advertising bears * * * one of * * * [five rotating] health warnings." (emphasis added) Section 4 of S. 647 also requires: (1) the warnings to be "located in a conspicuous and prominent place" on the advertisement (as determined by future Health and Human Service regulations); (2) all letters to appear in "conspicuous and legible type that is not script or italic"; and (3) the warnings to be in contrast by typography, layout, and color with all other printed material in the advertisement, and surrounded by lines forming a box.

IMPERMISSIBLE RESTRICTION ON THE PRESS

While NAA and NNA understand that public health and safety concerns motivated this legislation, we believe Congress should proceed with extreme sensitivity and caution whenever it considers regulating the content of speech as a method of regulating the sale and use of a lawful product.

By prohibiting "any person" from advertising or causing to be advertised alcoholic beverages without the mandated health warnings, the legislation appears to impose "policing" responsibilities upon newspapers and other media carrying such advertising. If this in fact is Congress' intent, the bill's attempt to control editorial decisions is constitutionally suspect. The U.S. Supreme Court has made it clear that the choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the newspaper constitute the exercise of editorial control and judgment. *Miami Herald Publishing Co.* v. *Tornillo.*[1] *Laws that force the press to bear the burden of enforcing government legislation impermissibly infringe upon the freedom of the press. For example, in News & Sun-Sentinel* v. *Board of County Commissioners,*[2] a newspaper successfully challenged a county ordinance that required the press to ensure that ads relating to contracting services contain certain disclosures. In a similar vein, in *Memphis Publishing Company* v. *Leech,*[3] the district court declared unconstitutional a Tennessee statute requiring advertisements for alcoholic beverages sold by out-of-state retailers to carry a warning about the illegality and potential consequences of transporting alcoholic beverages into Tennessee without a permit. The court held that the statute violated the First Amend-

[1] 418 U.S. 241(1974)
[2] 693 F. Supp 1066 (S.D. FLA 1987)
[3] 539 F. Supp 405 (W.D. Th 1982)

ment by intruding impermissibly into the editorial discretion involved in accepting and preparing the copy of commercial advertising.

MORE EXTENSIVE THAN NECESSARY TO ADVANCE GOVERNMENT'S GOAL

Advertising (or commercial speech) is the central means of communicating information required for economic decision-making in our free society. In a series of decisions,[4] the U.S. Supreme Court has recognized that truthful advertising relating to lawful activities or products is entitled to First Amendment protections. In a recent case, *City of Cincinnati* v. *Discovery Network*,[5] Cincinnati argued that it could deny commercial advertisers access to sidewalk newsracks used by newspapers because commercial handbills (consisting of mostly advertising) were less valuable than newspapers. Justice Stevens, writing for the Court, rejected Cincinnati's argument, stating: "We are unwilling to recognize Cincinnati's bare assertion that the 'low value' of commercial speech is a sufficient justification for its selective and categorical ban on newsracks dispensing 'commercial handbills.'" Id at 4276. As the Court recognized in *Discovery Network*, speech is not stripped of First Amendment protection simply because it appears in the form of a commercial advertisement.

Although the Supreme Court has indicated that some of the full protections of political speech may not be accorded to purely commercial speech, the burden falls on the government to show a reasonable fit between its health goal and the regulation chosen to accomplish that goal. In short, before the government can impose commercial speech restrictions— such as warning messages—it must demonstrate that the need for such warning messages exist and that the warning messages will be an effective method of curbing alcohol abuse. In a recent case *Edenfield* v. *Fane*,[6] the Supreme Court struck down a Florida rule prohibiting face-to-face commercial solicitations by CPA's. Although the Court found avoiding deception and maintaining CPA independence were substantial interests for Florida to assert, it ruled that the ban on speech did not "directly advance" the interests involved. Justice Kennedy, writing for the Court, stated:

> "It is well established that [t]he party seeking to uphold a restriction on commercial speech carries the burden of justifying it." *Bolger* v. *Youngs Drug Products Corp.*, 463 U.S. 60, 71 n. 20 (1983). "* * * This burden is not satisfied by mere *speculation or conjecture;* rather a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." Id at 4433. (emphasis added)

While NAA and NNA agree with the sponsors of S. 647 that alcohol abuse is a serious problem in this country, we believe the proponents of the bill have failed to demonstrate that mandated warning messages in alcohol advertising would directly advance the government's interest of reducing alcohol abuse and alcohol consumption by underage youth.

NAA and NNA recognize that the First Amendment protections offered commercial speech are not absolute, and that commercial speech, which promotes illegal activities or products, may be restricted. See, e.g., *Pittsburgh Press Company* v. *Human Relations Commission.*[7] Although the use of alcoholic beverages by minors is illegal, the government should not deny adults access to protected speech in order to shield juveniles. The Supreme Court has determined that legislative restrictions that "reduce the adult population * * * to reading only what is fit for children" are more extensive than the Constitution permits. *Bolger* v. *Youngs Drug Products Corp.*[8]

Although it may be argued that the warning messages required by S. 647 permissibly regulate deceptive or misleading speech, little evidence has been offered to prove that alcoholic beverage advertisements are so inherently misleading as to require the mandatory inclusion of specifically worded messages. In Virginia Pharmacy, Justice Blackmun noted:

> "The [attributes of commercial speech such as its greater objectivity and hardiness] may also make it appropriate to require that a commercial message appear in such a form, or include such additional information, warnings, and dis-

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[4] *Peel* v. *Attorney Registration and Disciplinary Commission of Illinois*, 110 S. Ct. 2281(1990); *Central Hudson Gas & Electric Corporation* v. *Public Service Commission of New York*, 447 U.S. 557 (1980) and *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976)

[5] 61 U.S.L.W. 4272 (1993)

[6] 61 U.S.L.W. 4431 (1993)

[7] 413 U.S. 376 (1973)

[8] 463 U.S. 60.73 (1983) Citing *Butler* v. *Michigan*, 352 U.S. 380, 383 (1957)

claimers, *as are necessary to prevent its being deceptive.*" Id at 771. (emphasis added)

This is not to say that alcoholic beverage advertising that is deceptive or misleading is immune from challenge. The Federal Trade Commission Act already empowers the Federal Trade Commission to prohibit such advertising. Absent clear evidence, it should not be assumed that alcoholic beverage advertising per se is deceptive without a health warning.

NAA and NNA believe a very troubling precedent is set whenever the government dictates the content of speech by private entities. S. 674 not only proposes to do that, but also would give a regulatory agency—the Department of Health and Human Services—the power to determine when certain messages would be published, for how long and by whom.

UNFAIR DISCRIMINATION AGAINST CERTAIN SECTORS OF THE MEDIA

In Section 3, S. 647 declares that the health messages for alcohol advertisements in magazines, newspapers, brochures and promotional displays must contain a toll free telephone number, which would link consumers with public health information provided by the Department of Health and Human Services. Since this requirement would not apply to the mandated warning messages for alcohol products advertised through radio and television, NAA and NNA believe the bill unfairly singles out one sector of the media for differential regulation and would trigger heightened scrutiny under the First Amendment.

The leading case illustrating this problem concerns the taxation and regulation of newspapers—*Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue.*[9] In the early 1970's, Minnesota imposed a use tax on the cost, in excess of $100,000, of ink and paper used in the production of a publication. The U.S. Supreme Court invalidated Minnesota's paper and ink use tax because it violated the First Amendment on two grounds. First, the Minnesota tax "singled out the press for special treatment." Id. at 582. Second, the Court wrote, the Minnesota tax "violates the First Amendment not only because it singles out the press but also because it targets a small group of newspapers"—those consuming more than $100,000 of ink and paper annually. Id. at 591. By targeting only a few members of the press, the regulation "present[ed] such a potential for abuse that *no interest* suggested by Minnesota [could] justify [it]." Id at 592. (emphasis added)

The U.S. Supreme Court reaffirmed this decision in *Arkansas Writers Project, Inc.* v. *Ragland, Commissioner of the Revenue of Arkansas,*[10] holding that the taxation of selected media is discriminatory and impermissible under the First Amendment. Arkansas imposed a tax on the receipts of tangible personal property, but exempted numerous items, including newspapers and religious, professional, trade, and sports journals and/or publications printed and published within the state (except magazines). Justice Marshall, in writing for the Court, stated:

> "the Arkansas sales tax cannot be characterized as nondiscriminatory, because it is not evenly applied to all magazines. * * * Because the Arkansas sales tax scheme treats some magazines less favorably than others, it suffers from the second type of discrimination identified in Minneapolis Star." Id at 229.

We believe that, applying the rationale of *Minneapolis Star* and *Arkansas Writers* to the regulatory scheme envisioned by S. 647, this legislation— if enacted— would single out newspapers and other print media for differential regulation and discriminate against the print media, in violation of the First Amendment.

BROAD IMPACT OF HEALTH WARNINGS

Although S. 647 does not define alcohol advertising, the bill apparently seeks to remedy a problem that some perceive with the national advertising of alcoholic beverages. However, the bill's broad provisions would seemingly affect the name brand and price advertisements of grocery and liquor stores that merely contain name references to particular alcoholic beverages. (Samples of this type of advertising are attached as exhibits to this statement).[11] Regardless of the merits (or lack thereof), we doubt whether such a result is intended or desired.

Advertisers of these types of services or activities should not be forced to purchase additional space in order to include rotating warnings where alcohol may be men-

[9] 460 U.S. 575 (1983)

[10] 481 U.S. 221 (1987)

[11] As further evidence of the broad applications of the proposed legislation, we have attached samples of airline and special event advertising that have been placed in newspapers. If S. 674 were enacted, these advertisements, along with liquor and grocery store brand advertising, would require warning messages on the health risks of alcohol abuse.

tioned, but only is tangential to the main purpose of the advertisement. One would be hard-pressed to argue convincingly that applying the bill's restrictions to these types of advertisements would resolve alcohol abuse problems.[12]

CONCLUSION

It is highly questionable public policy for Congress to use restrictions on protected speech as a shortcut attempt to remedy alcohol abuse problems. Moreover, particularly in light of recent Supreme Court decisions affording more protection to legitimate commercial speech, we believe such restrictions will not pass constitutional muster. Other less intrusive measures, such as public education campaigns, public service announcements, alcohol treatment programs or stiffer penalties for driving while under the influence, would be less offensive to the First Amendment and, at the same time, provide more effective public policy options.

NAA and NNA believe a very troubling precedent is set whenever the government dictates the content of speech by private entities. Regulation of commercial speech should be a "last resort" action of government. Only where there is concrete evidence showing that an identifiable problem cannot be solved by any other means, and that the means selected can be effective, can the government turn to measures that restrict speech. Thus, the case has not been articulated which would support as harsh a statutory restriction on commercial speech as that embodied in S. 647.

For these reasons, we urge the Committee to reject S. 647 and consider other, less intrusive and Constitutionally-supported methods of addressing the problem of alcohol abuse.

We respectfully ask that this statement be included in the hearing record.

[Ads from the Washington Post of April 8, 1992 and May 17, 1993; the St. Louis Post-Dispatch Magazine of October 4, 1992; the Los Angeles Times of June 19, 1990; and the New York Times of June 13, 1990 may be found in the committee files.]

LETTER FROM RICHARD K. BLATT, EXECUTIVE DIRECTOR, POINT-OF-PURCHASE ADVERTISING INSTITUTE, INC.

MAY 27, 1993.

The Honorable ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC 20510

DEAR CHAIRMAN HOLLINGS: The Point-Of-Purchase Advertising Institute requests that its position contained in this letter be included in the record of the hearings of the Senate Commerce Committee, which was conducted May 13, 1993.

POPAI concurs with the constitutional agreements we understand were presented in ensuring that first amendment commercial free speech rights be observed in relation to proposed regulation of advertising for alcohol related products.

As importantly, POPAI would call the committee's attention to the impact the Simon/Thurmond proposal would have on point-of-purchase advertising. It would be a defacto ban on some point-of-purchase advertising, since the required words of warning would physically not fit on certain in-store advertising media.

Additionally, by its nature, point-of-purchase advertising displays often literally hold the alcohol products themselves. As you know, these individual products already possess warning labels. It is not without precedent that point-of-purchase be exempted in some context from being required to provide such warnings. POPAI requests the committee consider these points in reaching a consensus on the proposal.

Thank you for your consideration.

Sincerely,

RICHARD K. BLATT.

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[12] In a similar situation regarding the regulation of cigarette labeling and advertising, Congress chose to exempt retailers and distributors from cigarette product labeling requirements (15 U.S.C. 1333 (d)). Allowing a similar exemption to S. 674 would narrow the scope of the proposed regulations and define, more clearly, the intent of the proposed legislation.

LETTER FROM STEVEN H. SHIFFRIN, PROFESSOR OF LAW, CORNELL LAW SCHOOL

MAY 25, 1993.

Senator ERNEST F. HOLLINGS,
U.S. Senate,
Washington DC 20510-6125

DEAR SENATOR HOLLINGS: At the May 13, 1992 hearing on S. 674, Senator Pressler encouraged the witnesses to comment on what the implications might be of recent stories suggesting that the consumption of wine might assist in the lowering of cholesterol. I am submitting this statement for the record in response to Senator Pressler's question as well as to a few related points raised at the hearing.

The issues posed by Senator Pressler's question are similar to those presented by the industry advocates who argue that unlike tobacco, the problem in the consumption of alcoholic beverages lies in its abuse, not its use. There are several difficulties with this argument. First, for many millions of Americans the use of alcoholic beverages is abuse, e.g.. persons under the age of 21, pregnant women of any age, persons who take prescription drugs that conflict with alcohol, people prone to stomach bleeding, alcoholics, or people prone to become alcoholics. Mass media campaigns that successfully encourage, for example, persons under the age of 21 to drink perform a distinct disservice to the national interest.

Even if the use of alcoholic beverages were not itself an abuse for many millions, the promotion of alcoholic beverages without warnings encourages increased usage which will predictably increase abuse. There is no substantial public interest in further promotion of the use of alcoholic beverages that outweighs the problems associated with the predictable abuses. Moreover, to the extent that the consumption of alcoholic beverages is not abuse, promotion of alcoholic beverages with exciting music, sexism, and concocted scenarios of joy is hardly the way to make a decision about whether to drink alcohol as a way of lowering blood cholesterol. A doctor should give that advice, not an advertiser. Indeed, a doctor would observe that whatever benefits to the heart (if they exist) might well be outweighed by risks of cancer of the esophagus and the stomach, not to mention cirrhosis of the liver. See generally Ben Sherwood, Wines and Roses, 22, 25 Washington Monthly (May 1993). Certainly exercise, stopping of smoking, and the adoption of a low fat diet are safer recommendations for the mass public if one strives to reduce the risks of heart disease. Any notion that people should start drinking now to help their heart without medical advice is lunacy.

Indeed, the significance of the use/abuse distinction for this bill is grossly exaggerated by industry advocates. The bill would not outlaw consumption of alcohol or even advertising of alcoholic beverages. Rather the bill requires warnings. A requirement of warnings is not a ban. The advertisers' claim that they will engage in a group boycott of the airwaves not only is hard to credit, but also seems to amount to a claim that they will violate the antitrust laws. The claim is revealing nonetheless. One witness stated that the industry would not sponsor ineffective advertisements. If the purpose of the ads is really brand shifting, the Surgeon General's warnings would in no way make their ads ineffective. If the purpose of the ads is to promote the consumption of alcoholic beverages (of course, both purposes are present), their ads will be less effective in promoting consumption, precisely in those cases where the public interest demands that their ads be less effective. The industry's denials that advertising without warnings do not encourage consumption are rubbish.

Finally, the claim that Congress, by requiring warnings of alcoholic beverage advertising will cross a great conceptual border (because it will require warnings for a product that can be used without abuse) not only ignores the required warnings on bottles and cans (which themselves contain advertising for the products), but also ignores the *Zauderer* case, which is discussed in some detail in my prepared testimony. I would underscore two points about *Zauderer*. First, the Court in *Zauderer* appeared to reject the notion that a test as severe as *Central Hudson* should be applied in the case of mandatory disclosures (because more information would be provided than would be the case if a ban were enacted); second, given that a ban can be founded on aesthetics and conservation, the less intrusive step of required disclosures can be enacted for the public health.

Sincerely,

STEVEN H. SHIFFRIN,
Professor of Law.

PREPARED STATEMENT OF FRAYDUN MANOCHERIAN, THE MANOCHERIAN FOUNDATION, INC.

The Manocherian Foundation appreciates the opportunity to submit this testimony to the Consumer Subcommittee of the Senate Commerce, Science and Transportation Committee regarding S. 674, the Sensible Advertising and Family Education (SAFE) Act. We applaud the efforts of those legislators who have faced the reality of the alcohol problem in this country and admitted that the current system needs help. However, the solution to this problem, we believe, will not be found solely in warning message legislation like those measures contained in the SAFE Act.

The number one cause of deaths among the young every year in America is the auto crash. It is also the number one disabler of all ages. Half of these fatalities are alcohol-related. Every year 100,000 Americans die as a direct result of alcohol consumption.

Think about it. In 10 years of America's involvement in Vietnam, we lost 50,000 people. In one year, alcohol causes 100,000 deaths and costs the American public an estimated $100 billion. All other drugs, including marijuana, crack, cocaine, heroin, et cetera, cause 6,000 deaths per year. We are not belittling the severity of the illegal drug problem, we are just showing by comparison, the severity of the alcohol problem. Alcohol causes more deaths and injuries by car, fire, homicide, rape, date rape, battering, child abuse and domestic violence—than the calamities caused by ALL other illegal drugs combined.

There is a major inconsistency in the position of our government. If a person is caught with an ounce of marijuana, he is arrested, prosecuted and incarcerated. On the other hand, our government allows $2 billion annually worth of promotions and advertising so that the liquor industry can sell some $92 billion per year of the drug known as ALCOHOL. Does it make sense for our government to allow the promotion of one drug that costs society 100,000 deaths and $100 billion each year while the same government spends billions to stop the use and distribution of other drugs? We do not believe so.

It is our opinion that the cumulative effect of the massive alcohol advertising campaign has not only affected the population, but it has brainwashed us since infancy. So that at this time, we associate drinking with celebrations, sex, romance, sports, unhappiness, happiness, relaxation and machismo. In short, a total cure-all.

No, we are not prohibitionists, nor do we suggest abstinence to the legal, adult population. We believe in total freedom and agree with studies that show moderate alcohol consumption can be beneficial to health. We do not however, believe that the liquor industry should be free to promote a drug that affects the population much more adversely than all other drugs combined. A drug that's not only the cause of 50 percent of deaths in all auto accidents, but also a drug that is predominantly responsible for deaths and injuries in fires, homicides, rapes, assault and battery, child abuse and fetal alcohol syndrome.

The brainwashing has even affected movie-makers, who (not only sell product placements so that bottles may be prominently displayed, but) in most cases of celebrations show drinking. And any time the star is depressed, he or she reaches for the bottle. Romantic scenes feature some form of alcohol and drinks are often consumed before sex. Together with movies, the $2 billion in direct promotions each year of alcohol have brought society to a point where 30 percent of all 9-year-olds have peer pressure to drink. And we have 4½ million teenagers who are either problem drinkers or alcoholics.

The psychic numbing that alcohol causes by killing brain cells is now going to play a tremendous part in the epidemic of AIDS. For when we drink, we are much less likely to take the precautions for safe sex— particularly in the case of the young— whose sexual impulses are more predominant.

The alcohol industry contends that their advertising is geared to switch brands. They and the tobacco industry are the only two advertisers making such claims. In fact, their advertising for the most part is geared to recruit new young users and to increase consumption regardless of its effect on the public. Their concentration on college campuses and spring break proves this intention. Thirty five percent of college newspaper advertising revenues are from the alcohol industry.

The safety organizations are desperately making attempts to stop drinking and driving, and trying to safeguard the public in many other ways from the contribution of alcohol to disasters in our lives. However, the aggregate amount spent on these efforts is merely a pittance compared to the $2 billion spent annually by the alcohol industry on advertising alone. It puts us in a position of swimming upstream in a vicious flow that totally drowns us. The only possible way to stop that flow is to make illegal the advertising of alcohol, which is recognized by the U.S. Government as a drug.

If every adult in this country had two drinks a day, the alcohol industry would lose 40 percent of its income. One advertisement claimed moderate drinking was four drinks a day. While problem drinkers and alcoholics constitute 10 percent of the drinking population, they consume 50 percent of all alcohol consumed in America. If all the problem drinkers and alcoholics were cured overnight, the alcohol industry would lose half of its sales.

Therefore, while it's quite appreciated that the alcohol industry makes token gestures of coming up with cliches like: "Know when to say when" and "Think when you drink," it is not to their economic interest that the sick drinker be cured nor for the population to drink moderately.

Again, let us emphasize, we are not prohibitionists. We do not suggest abstinence for the legal adult population. And we are emphatically for freedom of people to do as they wish. Our objection is to the promotion of a drug and the inconsistency of the government in allowing such massive promotion of this drug, with such huge cost in lives, injuries and to the public—while on the other hand, spending billions to stop the possession and use of other devastating drugs which cause less harm than alcohol.

We suggest an all out effort by our legislators to stop this inconsistency; not by prohibiting the use of alcohol, nor by solely attaching warning messages to advertisements, but by stopping altogether the glorification and promotion of this drug on the airwaves licensed by our government.

The Manocherian Foundation through its work in prevention education has determined that our society will continue to experience binge and underage drinking problems, among others, until we have addressed the systematic creation of the DEMAND for alcohol among minors and other vulnerable populations through its glorification and advertisement in the mass media.

This systematic creation of demand for alcohol not only reaches minors but is designed to appeal to them and is tantamount to the actual sale of alcohol to minors—which is illegal in all 50 states. Even worse, by creating a demand, then withholding this product, society promotes a clandestine consumptive attitude for alcohol among minors which results in the destructive underage behaviors this bill is intended to stop. We have an underage drinking problem in this country because society permits the active, systematic promotion of alcohol to minors. Counter-messages and warnings will never sufficiently offset such promotion.

We agree with studies cited in S. 674 such as the AAA Foundation for Traffic Safety's correlation between exposure of individuals to alcohol advertisements during youth and the development of drinking behaviors and attitudes that lead to certain forms of drinking problems. The Foundation would urge Congress to follow the advice of the National Commission on Drug-Free Schools' September 1990 Final Report and restrict alcohol advertisements on U.S. Government-licensed airwaves because they target youth and glamorize alcohol use. As long as there is such advertising taking place, alcohol producers should be liable for their negative consequences.

The "compromise" suggested by Senator Danforth in his testimony before the Committee that would require public service advertisements containing the health messages called for in the SAFE Act to be broadcast separately from the commercials does nothing to change the status quo. The most important component of this legislation is the direct association between the advertisement of the product and the risks associated with its use—which the alcohol industry now uses Senator Danforth to deny.

By disassociating the health warning from the product, the alcohol industry shirks its moral responsibility in the name of profit, burdens the government and safety organizations with the task and cost of warning the public and effectively eliminates the message from the public's vision. It is no secret that PSAs are rarely aired during the prime revenue producing hours, nor that the audience viewing them bears no resemblance to the audience viewing the alcohol advertisement. The alcohol industry is making a profit, let them pay for warning the public in context at the point of sale.

We believe that the enactment of SAFE in its current form would serve as an intermediary step toward eradicating the problems caused by alcohol misuse. The next, logical step would be to restrict advertisement in the mass electronic media. Congress need only look at the effects of the 1971 ban on cigarette advertising to see that this type of legislation works to decrease consumption and heighten society's intolerance for mutually destructive behavior.

We believe that the only way to begin to truly solve the many societal problems associated with alcohol outlined so effectively in the SAFE Acts is to remove the false and misleading mystique that surrounds its use, a mystique whose chief promoter is broadcast advertising.

We believe that S. 674, The sensible Advertising and Family Education Act is a step in the right direction and does not go far enough. The committee should support S. 674 as an interim measure only. The only way to truly solve the many societal problems associated with alcohol consumption is by enacting a restriction on alcohol advertising on broadcast media licensed by the Federal Government.

PREPARED STATEMENT OF PAUL WOOD, PH.D., PRESIDENT, NATIONAL COUNCIL ON ALCOHOLISM AND DRUG DEPENDENCE, INC.

The National Council on Alcoholism and Drug Dependence, Inc. (NCADD) is the nation's oldest and largest voluntary health organization dedicated to combatting alcoholism, other drug addictions and related problems. Founded in 1944, NCADD's primary mission is education, prevention and public policy advocacy. A network of close to 200 state and local Affiliates and thousands of volunteers across the country help us carry out our mission.

Since 1982, NCADD has acknowledged the need to address the pervasiveness of alcohol advertising as part of a comprehensive prevention plan to reduce alcoholism and other alcohol-related problems. NCADD issued a prevention position statement which included alcohol advertising reforms, especially those that impact on underage drinking. Also included in the prevention position was the need to raise the uniform minimum drinking age from 18 to 21, rotating warning labels on alcoholic beverage containers to include wine and beer, and increasing the excise tax rates on alcoholic beverages. NCADD advocated for each of these strategies in combination with increased consumer education and education and information programs.

The cumulative effects of the progress we and other groups have made by focusing on the environmental influences that contribute to alcohol-related problems and alcoholism would be greatly enhanced by the passage of the Sensible Advertising and Family Education Act of 1993 (S. 674).

HEAVY DRINKERS AND ALCOHOLISM

Alcohol is the nation's number one drug. At least eighteen million Americans are alcoholics or problems drinkers; the personal cost to themselves and to their families is immeasurable. The economic cost to the nation exceeds $85 billion dollars a year. According to a 1988 survey conducted by the National Center for Health Statistics, one in four families in the United States says that alcohol-related problems have negatively affected them. About one-fourth of all hospitalized Americans have alcohol-related problems. Heavy drinking contributes to high blood pressure, heart disease and cancer. According to the National Institute on Alcohol Abuse and Alcoholism, chronic excessive alcohol use is the single most important cause of illness and death from liver disease in the United States.

Despite the negative impact on so many American families, alcohol remains one of the most heavily advertised products in the nation. As a result, Americans get most of their information about alcohol through advertising for the product that never mentions its "downside." Many ads encourage heavy drinking and drinking in risky situations. American families must be better informed about the risks associated with heavy drinking. They need to know about alcohol's addictive properties and about potential health problems related to its consumption so they can make a more informed decision regarding its use.

YOUNG PEOPLE

While we have made progress in reducing the use of some illegal drugs by young people, alcohol remains the drug of choice for our nation's youth. The University of Michigan's annual High School Senior Survey for 1992 indicates that drinking by 13- and 14-year-olds continues to rise, as do rates of binge drinking by this age group. The negative consequences of youthful drinking are alarming. Not only does drinking sometimes cause alcohol poisoning and contribute to alcoholism, it also contributes to date rape, unplanned and unprotected sexual activity, vandalism and violence, school dropout rates and driving fatalities.

Schools, community groups and parents are frustrated by the mixed messages young people see and hear about alcohol. While we ask parents to be good role models for their children and to set consistent standards for their children's behavior regarding alcohol consumption, children see ads for alcohol products that never suggest there could be any negative consequences as a result of the use of the product.

There is widespread agreement among researchers that young people are particularly vulnerable to alcohol advertisements, yet the alcoholic beverage industry has refused to act upon repeated requests that they voluntarily stop producing ads that appeal to young people. While advertising alone cannot be blamed for alcoholism,

it does have an effect on attitudes about drinking and on consumption. If it didn't, we wouldn't need to spend time or money on prevention or moderation messages.

CONCLUSION

Government has an important role to play in improving the public health. The rotating warning messages on alcohol advertising required by the SAFE Act would enhance the public health and reduce the misuse of the product. Health and safety warnings will offer some educational balance to the glamorization of alcohol so characteristic of the ads, and offer the public access to information that they otherwise would not readily know or find.

Young people in particular may benefit most. S. 674 will provide them with factual information that could prevent or reduce underage use of alcohol and perhaps reduce the range of devastating consequences they experience as a result of early drinking. The rotating warning messages would support parents and teachers in their efforts to educate young people about the negative consequences of underage drinking and would be a step toward creating a national environment supportive of the "21" drinking age. Alcoholics, heavy drinkers and their families will be provided with health and safety information they critically need. Women who are trying to conceive or who are pregnant will receive information regarding alcohol's contribution to birth defects and that there is no safe level of alcohol consumption during pregnancy. S. 674 will improve the health of the public and help save lives.

PREPARED STATEMENT OF DONALD A. WYAND, VICE PRESIDENT, SHIPLEY'S BOTTLING WORKS, INC.

Passage of this legislation would have a serious effect on our business. If the government requires our ads to carry mandated warnings, we will lose one of the main tools available to us to generate consumer support for our high quality brands.

Alcohol abuse and underage drinking are not caused by advertising. Beer advertising spending has been going up over the last decade, but per capita, consumption has remained level and every indicator of abusive drinking has been going down.

At least 97 percent of the population know that alcohol can be hazardous when combined with legal or illegal drugs and that drinking abusively can be unsafe and unhealthy.

The proposed warnings could just as well be required for ads promoting consumption of high cholesterol foods or for any other product that is fine when used or consumed responsibly, but that can cause problems when abused.

The proposed ad warnings would have no impact on people who drink abusively or illegally.

Thank you.

PREPARED STATEMENT OF ALAN R. TIMOTHY, DIRECTOR, FEDERAL GOVERNMENT AFFAIRS, COORS BREWING CO.

At the conclusion of last week's committee hearing on S. 674, the sensible Advertising and Family Education Act, you referenced a number of statistics from an October 1991 Office of Substance Abuse Prevention (OSAP) Report entitled, "Too Many Young People Drink and Know Too Little About the Consequences." The report puts forth statistical data supporting the assertion that underage drinking is caused by a lack of knowledge.

This OSAP report is misleading and in stark contrast to the 1991 Inspector General's report developed and disseminated by the Department of Health and Human Services which asserts that the general public, including young people, are aware that chronic and excessive alcohol consumption can be harmful. As you will recall, Fred Meister, President of the Distilled Spirits Council, referenced this report in detail during the hearing. For your own edification, I encourage you to review the 1991 I.G. Report.

Furthermore, I would ask that you refer to the Beer Institute's testimony submitted at last year's hearing that includes the results of 1990 and 1991 surveys of 14- to-20 year olds by the Roper organization, the Department of Health and Human Services, and the National Institute on Alcohol Abuse and Alcoholism. These studies clearly show that teenagers are acutely aware of the legal sanctions and physical risk associated with abusive drinking. For your convenience, I have enclosed a copy of that April 1992 testimony (See pages 4 and 5).

As indicated in the Beer Institute testimony on S. 674, all leading indicators of alcohol abuse, including underage drinking, have shown steady improvement. In

some cases, improvement has been dramatic, particularly so in two key areas—underage drinking and traffic fatalities. Given the efforts expended to educate the public of the dangers of over consumption, it would be surprising if these trends were otherwise. The federal government alone spends at least $2.5 billion annually on alcohol abuse and drug-related education, prevention and intervention—an amount that is magnified by additional programs undertaken by State and local governments. These activities are further supplemented by those of churches, community groups, for-profit health organizations, as well as by brewing industry awareness programs that have totaled into the hundreds of millions of dollars in the past decade.

Coors and the beer industry believe we have a critical role to play in the fight against alcohol abuse. We are continuing to work with a compendium of groups to support effective, public and private partnerships to curb abuse. We in the beer industry are neither indifferent to the problems of alcohol abuse, nor are we in opposition to realistic efforts to combat it. Indeed, we are willing to work with the government and private groups to find and support effective, workable programs.

Often, however, our efforts are thwarted. A prime example of this lies in the activities and approach of OSAP—now called the Center for Substantive Abuse Prevention (CSAP)—the same agency which developed the underage drinking report you referenced.

CSAP has not only excluded our participation from activities it sponsors and supports, it also has never encouraged nor joined the beer industry in supporting our efforts to be "part of the solution" of the problem of alcohol abuse. Further, CSAP has put itself in a policy-making role regarding alcohol. Its publications, closed-door conferences and other programs promote anti-alcohol strategies—effectively aligning the government with the "control theorists" for alcohol. Moreover, through its grant network, CSAP has promoted its agenda to hundreds of grassroots groups nationwide. They have become de facto federal government policy makers on several issues concerning alcohol. We believe these activities at CSAP go well beyond their 1986 Congressional mandate and may be in violation of the federal lobbying laws. Please find enclosed an issue backgrounder which outlines in detail CSAP policy and practices. Any comments you might have on the CSAP issues backgrounder would be greatly appreciated.

Thank you.

["Issue Backgrounder From Anheuser-Busch Companies and Adolph Coors Company—Your Tax Dollars At Work—One Federal Agency's Efforts To Increase Restrictions on Americans Who Drink" with attachments may be found in the committee files.]

PREPARED STATEMENT OF DR. MORRIS E. CHAFETZ, PRESIDENT, HEALTH EDUCATION FOUNDATION

Mr. Chairman, I am Dr. Morris E. Chafetz, the President of the Health Education Foundation. I am the founding director of the National Institute on Alcohol Abuse and Alcoholism and I served as chairman of the Education and Prevention Committee of the Presidential Commission on Drunk Driving. I have worked in the field of alcohol issues for almost 40 years. Over the past ten years, I have worked with the National Association of Broadcasters on a wide variety of abuse prevention efforts.

I wish to make some general comments on the legislation and to respond to some specific points that were raised in oral testimony at the Committee's hearing on May 13, 1993.

It has been some time since I have testified before the Senate when I was in government service but I recall, with pleasure, the support and help this body provided me in creating a federal agency that was set on seeing that alcoholic people receive treatment instead of punishment. Senator Strom Thurmond was a strong and consistent supporter of my efforts in government and the tragedy he has suffered is especially painful to anyone who is a parent and grandparent as I am. However, I need not point out to this Committee, Mr. Chairman, that there is a danger in passing legislation on the basis of a personal tragedy. Historically, most emotional reactions do not bring about the desired result. As lawyers have taught me, bad facts make bad law. Asking to add warning labels to advertising is a simple and slick approach to a complicated and serious problem.

First of all, we must remember that neither young nor old people are Pavlovian dogs who respond to a warning or advertisement and engage in dangerous and

unhealthy behavior. There is not a single credible scientific study that proves that advertisements cause the beginning of a behavior or causes abusive behavior. As a matter of fact, we sometimes confuse recall with outcome. A study done in Connecticut some years ago on elementary school pupils, who, when asked how do you spell relief, answered R-O-L-A-I-D-S. However, studies showed that none of these elementary students bought any of the antacid substance. The desire for warning labels is remarkable in its simplicity but is ineffective in its outcome. A recent study supported by the government's National Insititute on Alcoholism showed that warning labels didn't increase knowledge or change behavior. As a matter of fact, there is some evidence that the promiscuous use of warning labels has turned off the American public and our opportunities to reach them is diminishing proportionate to our efforts to create simple solutions to complex problems.

We must realize that through a variety of circumstances, as proven by research, 98 percent of Americans are already aware of the information contained in the warnings and that is a greater percentage of Americans who can locate the United States on a world map. Because of what the broadcast industry and others have done there has been a dramatic drop in drunk driving crashes over the last several years.

There are other issues to be considered if this legislation goes forward. One is, the focus on the substance removes the focus on the people who need help. It dilutes the human element and we must remember that any way you slice it alcohol problems are human problems. One of the problems I am sure that would stem from passing such legislation would be the dimunition of advertising because it would stand to reason that a producer would be foolish to spend advertising dollars to tell the public that the product is harmful. I might point out to the Committee, Mr. Chairman, that obesity causes more health problems than the misuse of alcohol and I would hope that we are not going to get into a position where we would ask producers of food products to warn people about the dangers of overeating.

I recall some years back that some alcohol beverage producer was using a dog in its advertisements which infuriated a number of people. The head of the South Carolina Alcoholism Program, whom I had known for many years, was angry that this advertising ploy was an attempt to advertise alcohol to young kids. When I asked him on a panel "Did you mean that if a child saw a dog he'd want to reach for a beer?" He responded by saying "That's foolish." My response was, "You've given me the answer."

I believe, Mr. Chairman and members of the Committee, that to move in the direction of this legislation, S. 674, would be a foolish gimmick that will do more harm than it will do good.

Congressman Joe Kennedy spoke at the hearing to the fact that he "grew up with drugs"—drugs were part of his culture and his brother died of an overdose of drugs. The Congressman was obviously making reference to illicit drugs. What he did not note is that advertisements for illicit drugs were never allowed. Their use, however, was prevalent. Furthermore, the warnings against the damages of marijuana by the public and scientists, for example, were so excessive and unfounded (except for the important fact that it was illegal) that the credibility of the older generation was severely damaged. What we are seeing in some people in the generation that grew up with illicit drugs is what is called in psychiatry, as reaction formation; i.e., I don't want my children or other children to experience what I experienced. Because I did foolish and risky thing as a youngster, I don't want my child to do the same. Reaction formation is a common occurrence in most people: Their magical thought about any danger to their well-being is controlled by the belief, "It will not happen to mine." When the dreaded, unanticipated event does occur to them, their reaction formation shifts to, "If it happened to me, it can happen to anyone". With the shift of focus in the reaction formation, avoidance, warnings, inhibitions and punitive measures become the welcome solution.

Senator Strom Thurmond of South Carolina: I have been on opposing sides to the Senator on warning labels since he first proposed them in 1970, even though he was a very strong supporter of my efforts and programs at the National Institute of Alcohol Abuse and Alcoholism. The enclosed op-ed piece of mine from the Washington Star in 1979 lays out my arguments against warning labels then which are as applicable now. Note, however, that Senator Thurmond started out wanting only warning labels on alcoholic containers containing more than 24 percent by volume of alcohol. It did not take long before the shift on warning labels went from beverages containing 24 percent of alcohol to beverages with any alcohol content over 0.5 percent.

The shift toward the figurative elimination of alcohol in society is not unlike the shift in the emphasis in legislation on the alcohol content and warning labels. Most people putting forth their attacks on alcohol always assure the listener that they are not in favor of prohibition. They even tell you that they will have an occasional

glass of beer or wine similar to the anti-semite who assures people of a lack of prejudice by relating that some of his best friends are Jews. Strom Thurmond and the people who testified on the panel in favor of warning labels on advertisements for alcohol fundamentally think alcohol is an evil and unhealthy substance to be banished from use by any responsible member of society. Senator Thurmond also in his testimony listed a number of medical, pediatric and health care organizations who support his position on warning labels. My long experience with health care organizations is that they are easily willing to sign on to repressive measures against the substance alcohol to assuage their guilt about their inability to recognize and deal with people who have alcohol problems in the health care system.

Historically, what is going on is the shift in people's thinking about alcohol. At first the public is concerned about people with problems. As the momentum builds the pendulum swings to an attack on the substance. When Mr. Michael Dorris author of the "Broken Cord" and the father of adopted Fetal Alcohol Syndrome (FAS) babies testified, he powerfully argued against the use of alcohol by any women contemplating conception.

Let us look at drinking during pregnancy. When I released the Second Report on Alcohol and Health in 1974 as Director of the National Institute on Alcohol Abuse and Alcoholism, the report highlighted a 2,000-year-old fact: Pregnant women who are heavy drinking alcoholics tended to deliver impaired babies. Contemporary wordsmiths gave it a name: Fetal Alcohol Syndrome (FAS). Although the original estimates of FAS suggested that there were 1,500 FAS babies in the U.S., it wasn't long before the state of Wisconsin estimated there were 3,000 FAS babies within its own borders!

As the hysteria mounted, researchers sought out the truth. Not all pregnant women who drink abusively deliver babies with FAS or with alcohol-related birth defects. In a study of 12,000 pregnancies, 204 women were considered abusive drinkers. Yet only five babies among their 204 offspring had FAS. Other factors must have operated to protect the 199 other infants. The Seventh Report on Alcohol and Health highlights another factor that contributes to FAS: being a Black mother (or as I suspect, being a Native American mother who were the mothers of Dorris' adopted children). Black babies, it said are innocent victims of the hardships and deprivation carried by their alcoholic mother's socio-economic status. Babies born to "better-off" white alcoholic mothers are less likely to suffer from FAS.

Because alcoholic women do not always have obviously impaired babies, some researchers deduced that the impairment might not be readily observable. Therefore, the results of any use of alcohol taken during pregnancy were studied and measured against subtle abnormalities.

A Seattle study showed that a baby whose mother had taken some alcohol during pregnancy "tuned out," "had a delayed sucking reflex," "a greater tendency to turn the head to the left" and "less vigorous bodily activity." The author of the study urged caution in interpreting the findings, warning that tracing these outcomes to an occasional drink is an impossible task. A further complication to a cause-and-effect relationship between some alcohol during pregnancy and behavior during infancy is that each baby is unique and will achieve at its own pace.

Policy makers and advocacy groups, however, insist that pregnant women not take any alcohol—and demanded warning labels to "educate" women. But if taking alcohol during pregnancy were a real threat, many other societies would be in trouble. Some of us may want to believe that the behavior of the French and Italians may be a bit odd according to our standards, but no study reports that they suffer a greater amount of fetal effects from their use of alcohol during pregnancy—and some evidence suggests that in France, at least, they suffer fewer effects.

We have victimized the psyche of young American women. No child can ever live up completely or perfectly to parental expectations. If the child is slow in school or didn't make the tennis team, will the mother wonder and feel guilty about a sip of champagne taken to celebrate her pregnancy, or wine with a meal, or, heaven forbid, a Bloody Mary sometime during her pregnancy?

It appears that the concern about alcohol is nothing more than old moralism dressed up in newly fashioned medical or scientific clothing.

Senator Hollings raised a question on the effectiveness of warning labels on containers of alcohol beverages. The answer iS: Warning labels did not increase knowledge or change behavior.

That's the convincing conclusion of a major NIAAA-funded study of 2000 adults before and after warning labels appeared on alcohol beverage containers. The researcher wrote: "No significant chances were found in 1990" in the knowledge of women of childbearing age about the risks of drinking during pregnancy. "Similarly, among the young males at risk for drunk driving, there was neither improvement nor erosion in knowledge levels" for the warning that consumption of alcohol bev-

erages impairs ability to drive a car or operate machinery. The overwhelming majority of the respondents already knew of these dangers before the warning labels appeared on the container. (Before labels, close to 90 percent reported that these risks noted on the labels were "definitely true." Almost all respondents thought these risks were "probably true." These levels of knowledge mirror the results found by the pollster Roper earlier in 1992.) No statistically significant changes in knowledge were found among heavy drinkers either. On top of this, the researchers also wrote "no statistically significant changes in behavior were found between 1989 and 1990."

In addition to producing no change in knowledge or behavior, the labels were not even noticed by the vast majority of those surveyed. In fact, when factoring out those who said they saw it but couldn't remember any of the contents (even when presented with them as part of a multiple choice), only about ⅛ of respondents "probably" saw the warnings. About 39 percent of heavy drinkers (defined as consuming 5 or more at least once a week) "probably" saw the labels compared to less than 10 percent of abstainers. As an aside, 8 percent of respondents said they saw the warnings in 1989, before they even existed.

Though the control-oriented researchers discuss the ineffectiveness of warning labels shown in their results, they tried to massage the results to show some positive effects of warning labels. They even speculated about the usefulness of additional labels but gave no evidence. In effect, the research data and the analysis were often contradictory.

Despite this strong evidence that warning labels were virtually useless, the researchers argued: "We consider it inappropriate to consider the fact that no improvement in knowledge was found for the messages on the current warning labels to be an indication that the warning labels have failed * * * The messages chosen for inclusion do not represent areas where consumer knowledge is low. Then why have them in the first place? The researchers cited the fact that targeted groups like young male drinkers and pregnant women were more likely to see the labels. But if it didn't change their knowledge or behavior, then the warning labels were ineffective. For instance, 42 percent of young male drivers who saw the labels said they drove when they probably shouldn't have, compared to 21 percent of those who did not see the label. Also the only change in behavior, though of "small magnitude," was a "3 percent increase in the number of respondents reporting they had used machinery after drinking." The researchers made much of somewhat lower levels of knowledge concerning potential warnings of other risks, suggesting that perhaps broadening the warnings to include these (risk of cancer or high blood pressure) would improve health. Of course, this proposed label makes no distinction between use and abuse of alcohol as a risk factor. The researchers concluded: "A warning label policy that would increase consumer knowledge of health hazards might experience greater success if the less widely known dangers associated with alcohol consumption were instead selected." But they offered no evidence to back up this concluding speculation. This study appeared in the October 1992 issue of the Journal of Alcohol and Drug Dependence.

Another large-sample, government-funded study found that warning labels had virtually no effect on alcohol use or perception of risk. While the previous study looked at total population, this study focused on 2,000 high school seniors in one Indiana county but found the same results. One year after the warning label was implemented, the percentage of alcohol users stayed the same (74 percent) and the percentage of heavy users stayed the same (7 percent had 21 or more drinks in the last 30 days). Before the warnings 95 percent said that drinking alcohol can "definitely" impair ability to drive a car. The same percentage said that one year after labels appeared. Before the warning, 88 percent said drinking alcohol can "definitely" cause birth defects. 87 percent said that 1 year later. As in previous polls, almost all respondents thought these statements were at least "probably" true before the labels even appeared. The researchers wrote: "No positive chance in beliefs about the risks on the labels was observed." In fact, one year after the law passed, fewer students believed that alcohol could "definitely" cause health problems (87 percent compared to 91 percent).

Before the warning label passed, 19 percent said that such a law "definitely" existed. That rose to 43 percent one year later, while at the same time 91 percent knew of the cigarette warning labels law. So only a minority of students even knew the label existed. "Higher levels of alcohol use were associated with increased awareness * * * and exposure," but not to changes in behavior.

Once again researchers speculated about positive effects of labels in spite of their findings. The researchers conclude: "The results of this study suggest that the alcohol warning label may have already generated some of the cognitive chances that are precursors of behavior change * * * It is possible that over several years the incremental changes in awareness and memory for these risks may change personal

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decisions and social norms regarding alcohol use and ultimately reduce alcohol-related morbidity and mortality rates." Amazingly, the researchers speculate about possible positive effects years down the road though their results showed no chance in behavior and even slight decreases in awareness of potential risk. This study appeared in the April 1993 issue of the American Journal of Public Health.

Behind all of the thinking of people who supported warning labels in advertisements (or warning labels of any sort against alcohol) is the fundamental belief that ignorance leads to abstinence; that people, especially young people, are animals like Pavlov's dog: trained to reflexively respond to an advertising stimulus. It is unhealthy social policy and disrespectful of human beings.

The catechisms repeated at the hearing were of similar nature. Coach Dean Smith of the University of North Carolina who was concerned about beer ads targeting young people hopefully knows more about basketball than about alcohol. Two ounces of scotch are not equal to one beer, as he testified. The hysteria and misinformation was rampant in his testimony.

Joyce Brune, the mother of a teenage alcohol overdose victim, was understandably tragic in describing her daughter's death due to a lack of knowledge about alcohol poisoning. But poisoning is possible with the overuse or incorrect use of any substance. The same is true, for example, of oxygen: Premature babies were blinded by physicians providing them with too much oxygen; salt the same since six infants died in a St. Louis hospital in 1966 when a nurse accidentally substituted salt for sugar in the infant's formulas; the same is true for water: Three reported cases of water-death poisoning occurred because people were trying to wash supposed free-floating cancer cells from their gut by consuming heavy doses of water. Too much of any substance can kill or maim.

Larry Wallack pleaded for common-sense to convince people to believe that advertising causes alcohol problems. Wallack based his plea for common-sense because, as a scientist, he knows that no study exists to support the belief that advertising causes use or abuse. But belief and misperception were what held science back for one thousand years after Copernicus and Galileo proved that the Earth moved around the Sun and not the other way around. People could see with their very own eyes the Sun moving from East to West across the sky; how can one's belief and eyes not tell the truth? For the same reason people were positive that the Earth was flat; they could see on the horizon how the sky and the land met.

Common sense and reality are the catechism of people who want social policy to conform to their beliefs in spite of the evidence that warning labels are a waste of time and energy.

Dr. Joseph Wright, an emergency room pediatrician spoke of alcohol as the cause of liver cancer. There is no study that I know of that shows that alcohol causes cancer. It is true that some epidemiological studies try to show a statistical correlation between alcohol and some forms of cancer. Any scientist, worth his salt, knows that there is a wide chasm between statistical correlation and cause.

To show conclusively the uselessness of warning labels one need only to look at the worst health threat: smoking. In 1964, the Surgeon General of the United States released a report emphasizing the relation of smoking to ill health. Warning labels, advertising bans and every form of social ostracism was used to deplete the rank of cigarette users (N.B.: even the enemies of alcohol do not rail against alcohol as a substance; only its misuse.) Yet, after almost 30 years of strenuous warnings, the incidence of users has gone from 40 percent to 1 in 4 people or 25 percent continue to smoke.

One witness called warning labels a means to educate the public. If putting a warning label on a product or on an advertisement is deemed educational, this witness diagnosed, in an instant, why our education system is in serious difficulty. Warning labels, slogans, public relation campaigns are never education; to construe them as such is to do great harm to the American public and its young.

We must, where alcohol is concerned (because of its many health and social benefits), make sure that we do not adopt simple solutions to complex problems. I am convinced from my almost 40 years working in this area, that the greatest and most destructive addiction this country faces (greater than the addiction to smoking or illegal drugs, et al.) is the addiction by government and advocacy groups to simple solutions for complex problems, such as warning labels and advertising bans.

Understanding a problem is the first step to its solution. The momentum for the increased attention to S. 674 was the unfortunate death of Nancy Thurmond by a drunk driver. To understand the need to defeat S. 674, legislators and the public must understand the drunk driving problem. The warning label demand on all advertising for alcohol is based on faulty premises. The major factor underlying the drunk driving problem is drunkenness. Other factors include the complexity of driv-

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ing a car, the self-destructive nature of people with alcohol problems and the self-perceived omnipotence of youth.

Warning labels on advertising would have no impact on the problems that cause drunk driving or fetal alcohol syndrome. The proponents of warning labels in advertisements base their erroneous assumption that alcohol advertising and marketing "must" contribute to drunk driving, FAS, and other problems of alcohol abuse. The faulty premises as they pertain to drunk driving, for example, are: (1) alcohol advertising and marketing cause people to drink; (2) when people drink, they will get drunk; and (3) when they are drunk, they will drive. Therefore, drunk driving and other alcohol problems are "caused" by such advertising and marketing.

The premises about advertising have been repeatedly demonstrated to be false. Advertising neither causes people to drink nor drive according to all credible scientific studies. Most people, moreover, do not get drunk when they drink.

Even the proponents of warning labels in advertisements admit that no evidence exists to show that advertising causes people to drink— much less cause the abuse of alcohol. The fact is, substantial research already exists which fails to support this linkage between advertising and alcohol problems.

John Helzer, an Epidemiologist in the department of psychiatry of Washington State University of Medicine: "One method of prevention that does not seem to hold much promise is the restriction of alcohol advertising.'1

Paul Kohn, a leading researcher on television advertising and alcohol consumption: "Our results * * * do not support strong concern about the effects of televised beer advertising on a young male population, even with ongoing immediate access to beer."

George Comstock, one of America's leading observers of mass media in speaking of the absence of sound research precluding rational policy decisions: "We are rich in opinion and poor in facts."

Linda C. Sobell, a leading researcher of alcohol issues in Toronto: "The major finding is * * * neither drinking scenes in television programs nor beer commercials on television precipitated increased drinking by viewers."

Lawrence Wallack, a strong proponent of advertising bans and a witness supporting S. 674: "The promotion of alcoholic beverages is an issue of social policy. Facts play less of a role in determining policy than the values we hold which color the way we interpret these facts."

Donald Strickland, a leading researcher on the effects of advertising: "On the basis of the 'evidence' * * * the conclusion that the data 'are sufficient to suggest that alcoholics respond to these ads differently than other people' is unwarranted."

Mavis Horgan, a researcher and consultant to the Brewers Association of Canada: "On the basis of deaths where alcohol is, or is likely to be, a contributing factor, there is no evidence to support the hypothesis that broadcast advertising of alcoholic beverages increases alcohol-related self-imposed risks."

Harvard Marketing Study: "Young people tell us that celebrity endorsements are hypocritical and phony."

In closing this testimony, the National Association of Broadcasters (NAB) offers a constructive approach to drunk driving and other alcohol problems. The first step to alleviating drunk driving and other alcohol problems is to make drunkenness socially unacceptable. The attack on drunkenness must take place in our homes, our places of business, our social institutions, in the media and throughout the nation. The NAB is willing to work with all groups interested in trying to solve drunk driving and other alcohol problems.

Most behavior is controlled because most people need the acceptance and approval of the small social network that they are part of; none of us wants to be ostracized from our group. Thus, if the group conveys the message that drunkenness will not be tolerated, individual members will not be likely to get drunk. If fewer people are getting drunk, a major step to decrease drunk driving and other alcohol problems will have occurred. The cornerstone of an education-prevention campaign is to make getting drunk socially unacceptable. The steps are as follows: first, an educational campaign must be begun to explain the difference between taking a drink and getting drunk. Second, individuals can be trained and educated to recognize impending intoxication in others and to intervene effectively. The training's added dividend is that such training will help people monitor their own behavior. Third, families must be taught that education about drinking practices begins at home; how the parents use or abuse alcohol determines how their children will use or abuse alcohol. Fourth, the ongoing media campaign by this nation's broadcasters should be broadened and developed to make the public aware that getting drunk is socially unacceptable. Accompanying such media awareness will be a campaign to recommend that consumers ask establishments they frequent if they have had their sellers and servers trained to serve alcohol responsibly. Fifth, legal and financial incentives

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should be promoted to encourage anti-drunkenness efforts. These efforts, over time, will reduce and resolve drunk driving and other alcohol problems. The foundation has been laid already by the broadcast industry for what we are prepared to do.

[''Liquor Warning Labels Offer Little More Than Alarmism by the Drink,'' by Morris E. Chafetz, in the Washington Star of October 28, 1979, may be found in the committee files.]

PREPARED STATEMENT OF MILO KIRK, PRESIDENT, MOTHERS AGAINST DRUNK DRIVING (MADD)

MADD applauds the efforts of Commerce Committee Chairman Hollings and Senator Thurmond to promote debate on an important public safety and health initiative. We look forward to working with the Senate on the Sensible Advertising and Family Education Act as this debate moves forward.

MADD is a nonprofit organization with 3.2 million members and supporters nationwide. MADD's mission is to stop drunk driving and to provide services to victims of drunk driving crashes. Therefore, MADD's interest in this legislation lies specifically in how it may address the drunk driving issue.

Of the approximately 39,500 Americans who lost their lives on our Nation's highways in 1992, more than 18,000, or 46 percent, of those deaths involved alcohol.[1] While the death toll reflects heartening improvement from 1991, MADD knows that the loss of 18,000 lives—due to alcohol impairment is too many.

We know that reporting of the extent of injuries resulting from alcohol-related crashes was shockingly under-reported—by as much as two to four times—until very recently. Current estimates of alcohol-related traffic injuries total as many as 1.2 million.[2] And many of those have permanently disabling injuries which, especially in the case of head injuries, may leave the individuals medically indigent.

Over the years, MADD has consistently urged all Americans who choose to drink to do so in a responsible manner. In addition, MADD has long called on the alcohol and advertising industries to exercise responsibility in marketing alcohol products and to avoid any depiction of illegal or dangerous activities. We strongly believe that since purchase and possession are illegal for those under 21, alcohol advertising should clearly not target that age group.

In 1988 MADD joined a number of public safety and public health advocacy groups in supporting alcohol warning labels on alcohol beverage containers. MADD supported alcohol container warning labels because we felt that a person consuming an alcoholic beverage should be immediately reminded of the potential adverse side effects of driving after using what is a legal drug, but a drug nonetheless. Like many drugs one can legally purchase in a pharmacy, alcohol has side effects. One such effect is its impact on one's ability to drive a vehicle.

MADD felt in 1988, and continues to feel today, that persons who consume alcohol should be discouraged from getting behind the wheel of a car. Warning labels provide an immediate reminder of the hazards posed by drinking and driving. As with warning labels on other hazardous products, the goal is to alert the public to know risks associated with their use. And with the problem of burgeoning health care costs facing our Nation, it is even more urgent that we seize opportunities to enhance efforts to prevent alcohol-related hazards to life and health.

MADD is especially interested in the warning about the dangers of driving while impaired and the reminder that consumption by those under 21 is illegal. We base any support for this measure on these two significant aspects. These warnings are especially timely in light of recent findings regarding the inadequacy of age 21 law enforcement and the extent of underage access to alcohol.

The Senate bill introduced by Senator Strom Thurmond (R-SC) extends the concept of warning labels to print, broadcast, and promotional displays. The central question that must be asked is: Is it reasonable to extend the warning label concept to messages that promote the consumption of alcoholic beverages? In other words, should those who are being urged to consume alcoholic beverages be informed that to do so could endanger their own safety and the safety of others? MADD believes that the answer to these questions is yes.

Allow me to address several of the specifics of this measure. Of the warnings outlined in the bill, the two which are mentioned above are of particular importance

[1] National Highway Traffic Safety Administration, 1993.
[2] "Incidence and Cost of Alcohol-Involved Crashes," Miller, Ted R. and Lawrence J. Blincoe, NHTSA, 1993.

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to MADD. The restatement of the 1984 law that it is illegal to purchase alcohol for persons under age 21 is particularly meritorious. Ultimately the age 21 law will be only as good as its enforcement. While the law is estimated to have saved thousands of young American lives to date, better enforcement and education about the law would prevent even greater numbers of deaths. This warning helps to reinforce the law.

It is indisputable that the use of alcohol impairs one's ability to operate machinery or drive a car. One of the warnings would specifically address the danger of impairment of driving ability. Extending warnings about the dangers of mixing alcohol and driving is a goal with great merit.

Public policy in this area is evolving, with growing interest in setting "legal limits" at lower blood alcohol constant (BAC) levels. Although most States still have .10 BAC as the definition of intoxication, it is clear that impairment occurs at levels as low as .02 BAC. A February 1991 report to Congress on behalf of the Secretary of Transportation reiterates this fact and recommends that all States adopt .08 BAC for the general driving public.[3] Nine States, including California and most recently New Mexico, Florida, Kansas, and New Hampshire, have already passed .08 BAC as their legal limit. A recent NHTSA report revealed that the California .08 law, coupled with administrative license revocation (ALR) penalties, has been effective in reducing alcohol-related traffic deaths by 12 percent.[4] The Congress, in passing the Commercial Motor Vehicle Safety Act, set .04 BAC as the legal limit for truck drivers, and .04 is the limit for aviation. Due to this trend toward lower legal limits, more extensive and immediate methods are needed to inform the public about the potential effects of alcohol consumption.

One way to deal with the issue of impairment is through programs like "Designated Driver," which encourages drivers not to mix drinking and driving, and responsible server practice training. Expanding warnings into broadcast media offers an even more immediate and direct means of assuring that information about the hazards of alcohol is available to the public. It also offers the industries involved an ideal opportunity to demonstrate responsible marketing of a product with known hazards attached to its use.

There are those who would argue that we should not inhibit the use of a legal product. MADD is not opposed to the responsible use and enjoyment of alcoholic beverages. We in MADD are not prohibitionists. But, MADD does insist that alcohol be treated for what is is, a drug which can be legally and easily purchased. Further, alcohol is illegal for those under 21 and should carry a reminder of this fact.

MADD has been dismayed that the message that alcohol is a drug has been so difficult to implant in the conscience of our Nation. Only recently has the National Drug Control Strategy included alcohol, as a drug which is illegal for youth.[5] Yet alcohol remains the most commonly used and abused drugs in America.

Should this legislation move forward, there will be ample discussion concerning the practical means of incorporating warnings into print, broadcast, and promotional materials. There was ample discussion about the means of placing labels on containers of alcoholic beverages. MADD detected no groundswell of opposition to alcohol warning labels on containers.

MADD continues to work to eliminate the tragic results of alcohol- and drug-impaired driving. By increasing public awareness of the hazards involved in drinking and driving, the Sensible Advertising and Family Education Act will be helpful in that effort.

QUESTION ASKED BY SENATOR BRYAN AND ANSWER THERETO BY MR. MEISTER

Question 1. In your testimony, you note that individuals must accept responsibility for their behavior and change it. What is the industry doing to promote such changes?

Answer. First, personal responsibility for one's behavior rests with that individual. As much as one would like, it cannot be delegated. Only that individual has the power to change his or her own behavior.

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[3] Report to Congress, "Alcohol Limits for Drivers: A Report on the Effects of Alcohol and Expected Institutional Responses to New Limits," prepared in response to: Section 9003, P.L. 100-690, November 18, 1988, Drug Abuse Act of 1988, National Highway Traffic Safety Administration, U.S. Department of Transportation, DOT HS 807 692, February 1991.

[4] DOT Final Report, "The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se Law in California," National Highway Traffic Safety Administration, August 1991.

[5] The White House, National Drug Control Strategy: A Nation Responds to Drug Use, January 1992, Office of Drug Control Policy.

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We live in a society where each individual must accept the responsibility for his or her choices. In terms of beverage alcohol, this means that, if you choose to drink, you must do so responsibly. For those under 21, the responsible decision regarding alcohol consumption is zero use. For those over 21, the responsible decision may be not to drink at all. Those over 21 who choose to drink, must do so responsibly—for example, not to drink and drive.

Our industry always has opposed the abuse of our products. We do not want the customer who abuses beverage alcohol. We always have supported responsible use programs, and believe in the comprehensive systems approach embodying education, prevention, treatment, and law enforcement. We believe that this approach has worked and is working.

In my comments delivered at a recent Office of Substance Abuse Policy conference concerning alcohol-related injuries, I addressed the issue of personal responsibility in the context of underscoring the need to recreate a partnership—a triangular partnership between the U.S. Government, the alcohol beverage industry and the American public. Each partner can and should play a pivotal role in alcohol abuse. Our common goal: the elimination of alcohol abuse.

The issue of alcohol abuse is not an issue of information deficiency. On the contrary, Americans—even those under the legal drinking age—have a high degree of awareness concerning the risks of alcohol abuse. At the hearing, Senator Hollings referred to a report which referenced a June 1991 Report prepared by the Office of Inspector General for the Surgeon General, entitled "Youth and Alcohol: A National Survey—Drinking Habits, Access, Attitudes and Knowledge" (OEI-09-91-00652). In that Report, junior and senior high school students were surveyed concerning their views regarding beverage alcohol. The results of this survey show virtually universal awareness of the risks of alcohol abuse. For example, 98 percent of the students surveyed responded "true" to the question "mothers who drink alcohol during pregnancy have a higher risk of having babies with birth defects;" 96 percent responded "true" to the question "alcohol slows the activity of the brain;" 96 percent responded "false" to the question "a teenager cannot become an alcoholic;" 93 percent responded "false" to the question "alcohol improves coordination and reflexes;" and 87 percent responded "true" to the question "a person can die from an overdose of alcohol."

The very high level of awareness reflected in the Surgeon General's survey mirrors the results of many other polls. For example, a 1992 Roper Poll showed that 99 percent of the teenagers surveyed were aware of the reported risks of alcohol consumption during pregnancy; 99 percent were aware that alcohol impairs your ability to drive a car or operate machinery; and 98 percent were aware that drinking alcohol may become addictive. Similarly, a 1988 Report conducted for the Bureau of Alcohol, Tobacco and Firearms showed that 83.1 percent of the public knows that "drinking too much alcohol at one sitting can cause sudden death." These surveys are just a few among many that show that the risks of abusive consumption are commonly known by the American public. The level of awareness of such risks comports with and, in fact, exceeds the level of the public's knowledge of other generally known and recognized facts. For example, as I stated in my testimony, 25 percent of the Americans surveyed in a recent poll did not know why the Fourth of July was commemorated.

What are our roles within this partnership? First, this partnership between the government, the beverage alcohol industry and the American public must put aside its perceived differences and work as one toward the common goal of eliminating alcohol abuse. For the government, I see a commitment to bring all partners to the table, to entertain all points of view, and to put the resources we have to productive use by pursuing the most effective and promising solutions we have available to us. The solution to alcohol abuse is not advertising warnings. The solution is a comprehensive systems approach which utilizes all facets in the community for the purpose of educating the consumer. This program has worked and is working.

For the industry, I see a devotion to responsible marketing practices and a willingness to educate the public: to inform minors that responsible use means zero use; to tell adults that if they choose to drink, they must do so responsibly; and to inform the public that, like many products, alcohol can be abused. All of these activities reflect historical and ongoing endeavors of the distilled spirits industry.

For the members of the public, I see a commitment to individual responsibility and a duty to ensure that they and their children are well educated on what does and does not constitute appropriate use of beverage alcohol for them.

In formulating public policy, it is necessary to separate fact from fiction, truth from innuendo. Predicating public policy on flawed and faulty grounds only results in a disservice to the American pubic. Concerning this point relating to the matter of the purported relationship between advertising and consumption, I want to draw

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your attention to the statement submitted to the Senate Consumer Subcommittee on S. 664 last year by Dr. Martin P. Block. Dr. Block is co-author of the 1981 study referenced in Finding (11) in S. 664 that also was referenced in Finding (11) in S. 674, which is characterized therein as follows: "A major 19 1 federally funded study found a significant relationship between—(A) exposure of individuals to alcoholic beverage advertising as youth; and (B) drinking behaviors and attitudes of the individuals that can lead to certain forms of problem drinking." This characterization of the study is inaccurate and its use as a predicate for this legislation is groundless. These points are so critically important that I have set forth below excerpts from Dr. Block's statement.

In his submission, Dr. Block states:

> My interest in submitting testimony to this Subcommittee was triggered when I became aware that the preamble to S. 664 refers to our study as support for the proposition that a "significant relationship" exists between exposure of youth to alcohol advertising and drinking behavior and attitudes that can lead to certain forms of problem drinking. This reference distorts the substance of our report and ignores the caveats we put into the report concerning interpretation of the data.
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> The preamble's reliance on this study is surprising. As shown in more detail below, with respect to the issue of advertising effects the study actually provides no justification for restrictions on or curtailment of alcohol advertisements. Moreover, the study showed warning disclaimers on alcohol advertising to be ineffective.
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> The largest problem with the project, in my opinion, is that it has at times been vastly over-interpreted. The over-interpretation results from three failures: forgetting that the study was intended to be only exploratory (i.e., for the purpose of suggesting questions for further study, not providing answers), ignoring the fact that the study is a one-shot cross-sectional survey (where it was not possible to control for factors other than advertising that might affect the drinking behavior of persons in the sample), and misunderstanding the nature of correlations (which are not the same as causal relationships).
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> Perhaps one of the most obvious findings is that alcohol advertising is an important part of the mass media and is widely varied in its tactical and executional forms. The major finding with respect to possible advertising effects is the uniformly strong association with brand awareness and preference. There seems to be little doubt that advertising is strongly associated with brand competition in the industry. This finding was statistically the strongest association that we found out of all the variables we investigated.
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> The controversial issue of a statistical linkage between exposure to alcohol advertising and consumption is often associated with the study and deserves more detailed discussion. In the first place, we found a very weak correlation between self-reported alcohol advertising exposure and self-reported consumption. At best, our data indicated an association that would share no more than around 7 percent of the variability between exposure and liquor consumption that we measured for this sample, and less than 5 percent of beer consumption. In comparison, the relationship between exposure and brand awareness was much stronger. It is quite remarkable that this very weak correlation with consumption is now sometimes cited as the reason it is necessary to regulate or curtail advertising. As I said before, the study only indicated a correlation between advertising and consumption for this group, not a causal relationship. Certainly the study does not demonstrate that exposure to alcohol advertising causes consumption of alcohol that would not otherwise occur, because the design of our study doesn't permit anyone to reach that conclusion. Most importantly, from my review of the scientific literature I can find no persuasive evidence that advertising causes nondrinkers to start drinking, or that advertising causes drinkers to become abusers. In fact, based on the results of our content analysis, if anything the advertisements we studied would reinforce only moderate consumption, because that was virtually all that was portrayed in the ads.
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> We found no adverse association between alcohol advertising and knowledge of the dangers of alcohol abuse. For example, we found no statistically significant difference with regard to awareness of the dangers of drinking and driving

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and other hazardous activities between those who reported seeing more alcohol advertising and those who reported seeing less.

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In my opinion the most important finding of our study concerned the knowledge about alcohol use of the persons studied. The vast majority of our subjects were aware of the dangers of excessive drinking, such as drinking and driving or drinking in other hazardous contexts, and that daily drinking of excessive amounts was unhealthy. They also knew that drinking causes many problems in society and that drinking alcohol is no way to solve personal problems. But the study showed the need for more positive education about how to drink responsibly. It was my belief then, and still is now, that educational programs about alcohol consumption and use are needed. The form these programs should take and the age groups that should be targeted should be the subject of further study. Anything on this front would help, including the programs and advertising that the industry currently employs. They are certainly steps in the right direction.

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In conclusion, I believe that the proposed alcohol advertising warnings aren't needed and won't have any positive educational value. People already know about the fundamental risks mentioned in the proposed warnings. What is needed is more detailed education about how and when to consume alcoholic beverages, if they are consumed at all. This is something that no brief warning label can provide. I also believe that the proposed alcohol warnings may very well create new problems and might even aggravate overall consumer risks by desensitizing consumers to warnings generally.

In light of the fact that Dr. Block's study has been erroneously characterized on numerous occasions, we trust that this Committee now will view this study appropriately. In fact, the FTC nearly a decade ago criticized and rejected this study, stating that "[t]he general conclusion is that the work of Atkin & Block suffers from methodological flaws serious enough that it cannot be used to draw any conclusions concerning the effect of advertising on the total demand for alcohol or on the degree of alcohol abuse."

It also bears emphasis that Dr. Block's conclusion that there is "no persuasive evidence that advertising causes nondrinkers to start drinking, or that advertising causes drinkers to become abusers" is a conclusion that is mirrored in virtually every other study. For example, in 1985 the FTC concluded that its "review of the literature regarding the quantitive effect of alcohol advertising on consumption and abuse found no reliable basis to conclude that alcohol advertising significantly affects consumption, let alone abuse" and that "[a]bsent such evidence, there is no basis for concluding that rules banning or otherwise limiting alcohol advertising would offer significant protection to the public." Subsequent studies have confirmed the FTC's 1985 finding. A 1990 Department of Health and Human Services' report to Congress stated that "[r]esearch has yet to document a strong relationship between alcohol advertising and alcohol consumption." Similarly, a 1991 study reported in the Journal of Studies on Alcohol compared alcohol beverage sales in the Canadian province of Saskatchewan before and after an almost total advertising ban was ended in 1983. The study found no proof "that alcohol advertising is a contributory force that influences the overall level of consumption of alcoholic beverages."

To the same effect is the Surgeon General's own 1991 national survey of junior and senior high school students, which I referenced above. The underlying data of that Report reflecting the actual responses of the students surveyed also evidence that advertising and consumption are not linked. When asked the question "Do alcohol ads make you want to drink alcohol?" an overwhelming 86.2 percent of those youths surveyed responded no.

In closing, I again urge the recreation of a partnership between and among the government, the alcohol beverage industry and the American public to combat alcohol abuse. I stress the words "recreate" and "partnership." We believe it is through mutual cooperation that we best can achieve the mutually shared goal of the elimination of alcohol abuse in our society. Unfortunately, all too often today the alcohol beverage industry is viewed as the enemy, rather than as a necessary component to the solution of alcohol abuse.

This is truly unfortunate in light of the industry's long and well-recognized history of combatting alcohol abuse. In fact, our efforts began when Prohibition ended. Throughout the years, in fact the decades, DISCUS and its member companies have supported and continue to support programs combatting alcohol abuse and drunk driving and messages to the general public and to minors to underscore that, for

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those who are under 21, responsible use means zero use. Through our extensive education programs, our industry has urged and continues to urge responsible use by those adults who choose to drink and strong opposition to underage drinking and abuse by any group. Our industry is proud of its record in supporting educational programs as the long-term and effective solution to the problem of alcohol abuse.

Over the years, we have developed and executed numerous education campaigns about alcohol abuse, drinking and driving, underage drinking, and many other alcohol-related subjects. For example, we currently are conducting a public service campaign distinguishing use from abuse. In that campaign, we also state specifically that, if you are under age 21, responsible use means zero use. To date, campaign releases have generated more than 1,600 placements in newspapers throughout the country with a combined readership exceeding 15 million. We also have distributed over 44,000 posters, and our radio spot has aired over 17,000 times on more than 200 stations in 45 states. In addition, most of our member companies also are members of the Century Council, which represents brewers, distillers and vintners from across the country. The Century Council presently is conducting an extensive campaign to curb drunk driving and eliminate underage purchase.

We have conducted cooperative programs with the Departments of Transportation, Treasury, and Health and Human Services. Just one example of these efforts is the attached brochure, "Thinking About Drinking," which originated from an HHS publication and is distributed by DISCUS as a public service. We also have worked with the American Medical Association, the Education Commission of the States, the National Association of State Boards of Education, the March of Dimes, Students Against Driving Drunk, the National Football League, the National Education Association, the Rutgers Center of Alcohol Studies, the National Association of Women Highway Safety Leaders, the American Association of University Women, the American Council on Alcoholism, Harvard Medical School, the Health Education Foundation, and the Alcohol and Drug Problems Association. This list is merely illustrative, rather than exhaustive.

Despite what some of our detractors have stated, measurable results have been attained in addressing alcohol abuse. Consider the U.S. Government's own statistics:

- underage drinking is now at its lowest level since surveys began in 1974;
- fatal accidents involving teenage drunk drivers are down 52 percent since 1982;
- "binge" drinking among high school seniors has dropped well over 20 percent in the past ten years;
- drunk driving fatalities for all age groups declined 22 percent from 1982 to 1991.

The only rational conclusion to draw from these facts is that something is working. In our view, it is most importantly the recognition by the public that they, as individuals, must accept responsibility for their behavior and change it. It is also, in our view, the fact that the comprehensive systems approach—which stresses research, education, treatment, rehabilitation, and law enforcement—is working. I urge that we continue with these proven actions.

Every member of society, every organization in society, has its own unique social responsibility. As individuals, for example, we have an obligation to drink responsibly if we choose to drink at all. Those under the legal drinking age have an obligation not to drink. The alcohol user who becomes the alcohol abuser has the responsibility to seek treatment. Thus, every segment of society has an obligation to be responsible—this also means industry and government. If everyone's objective is to reduce alcohol abuse—as it should be—it is my belief that we can best do that by working together.

[The National Broadcasting Company's "Alcohol-Related Issues in Policy, Public Service, and Programming—1986–93" may be found in the committee files.]

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